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THE

DOCTRINE AND LAW

OF

MARRIAGE, ADULTERY,

AND

DIVORCE;

EXHIBITING A

THEOLOGICAL AND PRACTICAL VIEW

OF

THE DIVINE INSTITUTION OF MARRIAGE;

THE RELIGIOUS RATIFICATION OF MARRIAGE;

THE IMPEDIMENTS WHICH PRECLUDE AND VITIATE THE CONTRACT OF MARRIAGE;

THE RECIPROCAL DUTIES OF HUSBANDS AND WIVES;

THE SINFUL AND CRIMINAL CHARACTER OF ADULTERY;

AND

THE DIFFICULTIES WHICH EMBARRASS THE PRINCIPLE AND PRACTICE OF DIVORCE:

WITH AN APPENDIX,

CONTAINING AN ESSAY ON THE HELLENISTIC AND ECCLESIASTICAL MEANING OF THE WORD ΠΟΡΝΕΙΑ, ORDINARILY TRANSLATED FORNICATION.

Σοζυγιης αλυτοιο συναρίδα διζυγα. Nonnus.

Sed prudentissima proculdubio est libertatis divortiorum coercitio, sive libidinis ansas evitandas, sive successiones, sive publicam aliter pacem atque pietatem spectes. *Selden, Ux. Ebr.* l. iii. c. 34.

BY

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CHAPTER VI.

THE DIFFICULTIES WHICH EMBARRASS THE PRINCIPLE AND PRACTICE OF DIVORCE.

SECTION I.

The Right of Divorce assumed arbitrarily and without authority.

THE divine institution of marriage is not only a speculative opinion, but it is a powerful principle, affecting the whole law and doctrine of marriage, elevating its dignity, requiring its religious ratification, restricting its impediments, enforcing its duties, and aggravating the guilt of its violation. It is also a principle of the highest authority, in settling the term and period of marriage. If marriage be but a civil contract and nothing more, no reason can be alleged why the contract should not be limited to a certain period, or why it should not contain a covenant for the dissolution of the contract at the mutual pleasure and discretion of the parties. It is certain, that wherever the divine institution and the religious ratification, conformable with that institution, have been depreciated or neglected, the facilities of separation have been indefinitely increased: and this is the natural result which might be expected, that parties to a contract merely civil should fix the terms upon which they shall enter into a conventional agreement, into a voluntary association of persons

and of interests. There is nothing in marriage, considered merely as a civil contract, which essentially distinguishes it from other contracts, or which proves that it contains, what many have ascribed to it, a natural incapacity of being dissolved by the consent of the parties, at the option of both or either of them[a]. Expedience is the only ground of the permanence of marriage, considered merely as a civil contract.

"It is evidently most essential, according to every view of public expediency, as well as of justice between private parties, that of all contracts, that of marriage should have a fixed and indelible character, which it shall not be in the power of the husband to alter at pleasure. But the municipal laws as to divorce in almost every state, ancient and modern, are peculiar and local. These too are sometimes quite opposite even in neighbouring provinces of the same state. No example can be more striking than that of the three kingdoms of the British empire; in two of which marriage is indissoluble by judicial sentence; while in the other it may be dissolved either for adultery or continued non-adherence after legal requisition. By the law of the French revolutionary governments, and by the law of Russia, as to certain classes, incompatibility of temper has been made a ground of divorce. In the Netherlands opposite rules prevail. Those of the several states of Germany are altogether different from each other, and at variance. The municipal systems of the

[a] Paley's Mor. Philos. b. iii. pt. 3. c. 3. Selden de Jure Nat. et Gent. l. v. c. 7.

other countries of Europe are equally discordant on this head. In America, while some of the United States follow the English rule, in others six weeks' absence is a sufficient ground of divorce: and the European colonies throughout the world follow each the law of the kingdom to which they belong. Indeed, quotations from each would only prove, that perfect agreement between any two of these codes, as to the extent of the remedy to be afforded for conjugal wrongs, if it exists at all, is extremely rare; and that there is scarcely any other point on which such unbounded freedom of judgment has been exercised by each legislature. . . .[b]"

"Regulations as to divorce, both in respect of their origin and of their nature, have been held to form a subject altogether different, and to belong to a class entirely separate and distinct, from the essential qualities of marriage. No contrast indeed was ever more striking than that which subsists between them. Never was the different impress of divine and human origin more manifest. According to views of expediency and internal policy, often doubtful and transient, each legislature, following exclusively its own objects, has not only laid down peculiar rules, but has changed these from time to time as the circumstances of its own subjects happened to alter. Hence in these municipal rules there is so little of fixed and essential principle, that a collection of the whole, even upon the single article of divorce, would at first sight appear little better than a ludicrous exhibition of human inconsistency and caprice. Nor even

[b] Fergusson's Reports of Consistorial Decisions, p. 101.

after a stricter examination would satisfactory reasons always be found in the peculiar situation of each community for its peculiar provisions[c]."

In the fluctuations of human legislation on the subject of divorce, and in the precarious tenure of the bond of marriage considered merely as a civil contract, it is the more necessary to insist on the true principle of its divine institution; and to maintain, that persons marrying in conformity with the divine institution, are bound to comply with the terms which that institution prescribes. The words of the primary institution certainly establish the permanence and perpetuity of marriage, as an union which is indissoluble, as a contract which cannot be revoked. There is not only the leaving of the father and mother, the abandonment of the most powerful of all natural relations; but there is the cleaving of the man unto the woman, the adherence of the one to the other, and so perfect a consolidation of the parties, that in virtue of their marriage they are pronounced to be no more two but one flesh[d], combined in such unity as is incapable of division. The terms of the contract are irreconcileable with the idea of separation; and there is certainly no qualification of the terms, nothing which authorizes the presumption, that any dissolution of the contract was contemplated in the original institution. Such presumption is not only unauthorized, but it is positively precluded by the first and highest authority, which has pronounced, in reference to the practice

[c] Fergusson, 183.

[d] Gen. ii. 24. Matt. xix. 5. Mark x. 7, 8.

of divorce, that from the beginning it was not so; and that what God hath joined together it is not for man to put asunder[e].

The same doctrine, of the perpetual unity of marriage, is asserted in a perplexed and intricate passage of the prophet Malachi[f], and is made the principle upon which the Lord declares his abhorrence of divorce, or his permission of it only for the prevention of greater evils. But the most ordinary allusion to the doctrine is made in describing the connexion of God and of Christ with the Church, under the figure of a nuptial union. This description affirms the permanence and perpetuity of the union; not only from the historical fact that God has never forsaken the Church, but from the frequent allusions of the prophets to the prevailing practice, and to the authorized law, under which a man might not receive the wife whom he had divorced. This was a wholesome restriction upon the licence of divorce; but even to divorce thus restricted, the Lord would not give the sanction of his practice in respect of the Church; rather intreating her to return to him, notwithstanding her adulteries; and recalling the backsliding Israel to himself, notwithstanding the bill of divorce which she had received[g]. It was the opinion of one of the most learned, if not the most judicious, of the primitive fathers[h], and may be alleged in proof of the caution with which he thought it necessary to guard the doctrine of divorce, that

[e] Matt. xix. 4, 6, 8. Mark x. 6, 9. [f] Malachi ii. 16.
[g] Jeremiah iii. 1, 7, 12. [h] Origen. Com. in Matt. tom. xiv. s. 19. See also tom. xii. s. 4.

Christ did not attach himself to the Church of the Gentiles, before the Church of the Jews had withdrawn herself by a manifest apostacy from the truth. The permanence however of this divine union, or marriage of Christ and the Church, may be more clearly and unexceptionably maintained on the sacred truth, that the body of the faithful has ever constituted the true Church and Bride of Christ, and that, in the admission of the believing Gentiles as well as the Jews into the covenant of his grace, he has not so much transferred his favour, as proved the constancy of his love to them that believe and trust in him.

The permanence and perpetuity of marriage are too firmly established in the terms of the divine institution to need even the indirect support which may be derived from the figurative and mystical union of Christ with his Church: and the proofs of wisdom and mercy conspicuous in this arrangement are worthy of the providence of God. If that which is injurious to the common happiness of mankind is contrary to the law of nature, provisions which are made for the security of that common happiness are worthy to be interpreted in proof of the divine benevolence. The several designs proposed by the Deity, and the characters under which he appears in the institution of marriage, agree in recommending the permanence and perpetuity of marriage.

It was worthy of the wisdom of Him, who created the male and the female, to ordain the perpetuity of marriage, that the woman, who is always inferior in power, might not be subject to the arbitrary humours and caprices of the man. It was wise and necessary

to add a stability to the condition of married women, more secure than the continuance of a husband's affections; to supply to both, by a sense of duty and of obligation, what satiety has impaired of passion and personal attachment; to prevent the injury which is inseparable from the condition of the repudiated wife; and to provide that the real happiness of one half of the species should not be sacrificed to the voluptuousness of the other[i]. The effects of this wise provision are seen in strong contrast with the degraded condition of woman in heathen and Mahometan countries, where she is liable to be discharged when she ceases to be the instrument of pleasure or of profit: and the common sense of mankind has agreed in making the permanence of the relation the grand distinction between the wife and the concubine. It was the fine observation of Quintilian upon another occasion, Our affections are not at our command. . . . Matrimony is then only perpetual, when it is founded in mutual good will: when a man seeks for himself a wife, the partner of his bed, the companion of his life, the choice must be made for ever[k].

It was worthy of the wisdom of Him, who ordained that it was not good that man should be alone, to provide, in the perpetuity of marriage, an help meet for him throughout the whole condition of his infirmity. The man himself might otherwise be neglected when he should most need the consolatory assiduities of a wife's attention. The woman might

[i] Paley's Mor. Philos. b. iii. pt. 3. c. 3. [k] Quint. Declam. 376.

also be abandoned in the hour of trial and affliction, compelled to rely upon precarious and casual assistance, and destitute of the consolation which her infirmity may require. It was the pious prayer of Tobias, that he and his bride might grow old together[1]: and it is the prayer of every man who marries on a righteous principle, and in the ardour of young affections: but before old age arrives many a motive may arise which would recall the prayer: and the affectionate solicitude which an aged couple now take in the welfare of each other might be prevented, and a bright example of constancy and unbroken love be lost to the world, under a contract which was not indissoluble. In the ordinary circumstances of life, the permanence of the union has the best tendency to "preserve peace and union between married persons, by perpetuating their common interest, and by inducing a necessity of mutual compliance. There is great weight and substance in both these considerations. An earlier separation of the union would produce a separate interest. The wife would naturally look forward to the dissolution of the partnership, and endeavour to draw to herself a fund against the time when she was no longer to have access to the same resources. This would beget peculation on one side, and mistrust on the other, evils which at present very little disturb the confidence of married life. The second effect of making the union determinable only by death is not less beneficial. It necessarily happens that adverse tempers, habits, and tastes, oftentimes meet in mar-

[1] Tobit viii. 7.

riage. In which case each party must take pains to give up what offends, and practise what may gratify, the other. A man and woman in love with each other do this insensibly: but love is neither general nor durable; and, where that is wanting, no lessons of duty, no delicacy of sentiment, will go half so far with the generality of mankind as this one intelligible reflexion, that they must each make the best of their bargain, and that seeing they must either both be miserable, or both share in the same happiness, neither can find their own comfort but in promoting the pleasure of the other. These compliances, though at first extorted by necessity, become in time easy and mutual, and, though less endearing than assiduities which take their rise from affection in general, procure to the married pair a repose and satisfaction sufficient for their happiness[m]." Thus "though in particular cases the repugnance of the law to dissolve the obligations of matrimonial cohabitation may operate with great severity upon individuals, yet it must be remembered, that the general happiness of the married life is secured by its indissolubility. When people understand that they *must* live together, except for a very few reasons known to the laws, they learn to soften, by mutual accommodation, that yoke which they know they cannot shake off; they become good husbands and good wives from the necessity of remaining husbands and wives; for necessity is a powerful master in teaching the duties it imposes. If it were once understood, that upon mutual disgust persons might

[m] Paley's Moral Philos. b. iii. pt. 3. c. 3.

be legally separated, many couples, who now pass through the world with mutual comfort, with attention to their common offspring and to the moral order of civil society, might have been at this moment living in a state of mutual unkindness, of estrangement from their children, and of unrestrained and licentious immorality[n]."

The perpetuity of marriage is also worthy of the wisdom which provided marriage as the best means of securing the education of a godly seed[o]. Children have an inalienable interest in the continued union of their parents; and it has been argued in the spirit of a true philosophy, that it is the order of the divine Providence in respect of other animals, that the union of the parents shall continue so long as is required for the rearing of their young: and that even in savage life, where the traces of the primeval institution are all but obliterated, the casual intercourse of the parents is converted into a permanent relation, by the influence of that natural affection which leads them to reside together, that they may act in concert with each other, and unite their efforts in the preservation and care of their offspring. "But the long culture which is necessary in rearing the human species will generally afford to the parents a second pledge of their commerce before their assistance can be withdrawn from the former. Their attention therefore is extended from one object to another as long as the mother is capable of child-bearing, and their union is thus continued by the same causes

[n] Judgment of Sir W. Scott, in Evans v. Evans. [o] Malachi ii. 15.

which first gave rise to it. Even after this period they will naturally be disposed to remain in a society to which they have been so long accustomed: more especially as by living at the head of a numerous family they enjoy a degree of ease, respect, and security, of which they would otherwise be deprived, and have reason in their old age to expect the assistance and protection of their posterity under all those diseases and infirmities by which they are rendered incapable of providing for themselves[p]." In the improved policy of civilized life, and in the better duties which the Christian religion enforces, there is no termination of the parent's care, of the benefits of his experience, or the requital of his love, but in the silence of the grave. Unnatural separations "are manifestly inconsistent with the duty which the parents owe to their children, which duty can never be so well fulfilled, as by their cohabitation and united care. It is also incompatible with the right which the mother possesses, as well as the father, to the gratitude of their children, and the comfort of their society, of both of which she is almost necessarily deprived by her dismission from her husband's family[q]." It is only in its permanence that matrimony, blessing and blessed in the discharge of reciprocal duties, fulfils its great purposes, and becomes the auxiliary even of them that are advanced in years, affording the constant assiduity of a wife, and producing children for the support of old age[r]. By the same means the confusion of families is pre-

[p] Millar's Origin of Ranks, p. 18, 19. [q] Paley's Moral Philos. p. iii. pt. 3. c. 3. [r] Clem. Alex. Strom. l. ii. c. ult.

vented, the union of families is maintained, and children and children's children are brought up under their proper heads in a feeling of common affection to their parents and to each other, without the intrusion of that jealousy and partiality which are occasionally seen in the issue of second marriages, and which are more conspicuous in the polygamy and the capricious unions which prevail in the East. The evil which follows the voidability of marriage is the fruit of human folly: the sure benefit which follows the permanence of marriage proves its divine institution.

The casual benefit of marriage in the restraint of unlawful passion requires the perpetuity of the union, of which the interruptions are so full of danger, that, in the strong language of our Lord, of his apostle, and of the primitive Church[s], when the man deserts or neglects his wife he causes her to commit adultery, and opens a way to the temptations of Satan through incontinence. Whenever the privilege of a second marriage is conceded upon divorce, the preference of another woman is a temptation too strong to be resisted; the possibility of marrying her seducer overcomes the scruples of the adulteress, and "new objects of desire would be continually sought after, if men could at will be released from their subsisting engagements[t]."

Little objection will probably be offered to the abstract argument for the indissolubility of marriage which is derived from the terms of the divine insti-

[s] Matt. v. 32. 1 Cor. vii. 5. Origen. Com. in Matt. tom. xiv. s. 24. [t] Paley's Mor. Philos. b. iii. pt. 3. c. 3.

tution, and from the proofs of divine benevolence exhibited in that arrangement. But in the practical application of the argument, as the fundamental principle of subverting the licence of divorce, there are many prejudices, many established opinions, many elaborate judgments, many venerated names, to be resisted: there is little to support the view which it is proposed to take of the absolute indissolubility of marriage, besides obscure intimations and remote authorities, which have ceased to influence the opinions of mankind; and it would be presumptuous to expect any immediate effect of the argument, beyond the excitement of enquiry into the received doctrine of divorce, the recommendation of new care and caution in interfering with the institution of God, and some restraint upon the temerity of men, in claiming to themselves a right to dissolve the bond of marriage, in pronouncing adultery at least a dissolution of the union, and in conveying to the innocent or the guilty party a licence to marry again. In proceeding to maintain the entire indissolubility of marriage, it is proposed to examine the law and licence of divorce, first in itself and in its principle, without reference to the authority of our Lord.

It is necessary, however, to obviate a common and primary objection, that adultery is in itself a virtual dissolution of the bond of marriage, and equivalent to an act of divorce. It would not be difficult to shew that this position rests entirely upon authorities of the New Testament, (misinterpreted and misapplied as they will be proved to be,) and that it was unknown to the more ancient systems of

divorce, of which the licence was extended far beyond any principle connected with the unity or the bond of marriage. The argument is thus stated by Bishop Jeremy Taylor, and made to rest on the abused authority of the Scriptures: "Since an adulterer is made one flesh with the harlot with whom he mingles impure embraces, it follows, that he hath dissolved the union which he had with his wife, or she with her husband: for he cannot be one with his wife, and one with the harlot, and yet be one in himself and they two; for that is a perfect contradiction; for that which is one with two is not one but two." The Bishop proceeds to argue upon his own statement: "The adulterous man is one with the harlot, but this union is not a natural union, but a spiritual and legal, as appears by the effect of second and third marriages: for one person can no more be one naturally with two or three successively, than he can be one with many at one time; and when the patriarchs were married to divers women at once, they were not naturally one with them all, but legally they were; that is, they were conjoined in holy bands, and were to very many purposes to be reckoned but as one. Ἐν γαρ εισιν ανηρ και γυνη τη φυσει, τη συμπνοια, τη ἑνωσει, τη διαθεσει, τω βιῳ, τω τροπῳ· κεχωρισμενοι δε εισι τω σχηματι και αριθμῳ, said Clemens. They were one person by union of affection; they had one bed, one purse, one interest, community of children, communication of bodies, equal rights as to the power of marriage, the same band of duty tied by the same mystery. Now he or she that commits adultery, breaks this union, and divides or imparts some of the rights due to each other to an impure

person, and they become one flesh in an impure mixture. Now because he or she that first breaks this union loses their own right by invading or giving away another's, therefore the offending person may be put away, or refused in their petition of right, which they have lost by doing wrong. But the adultery hath not so united the offending persons, but that the union can, and may better, be broke, and the erring party be reduced to his rule and to his right. For it is but a legal and it is a spiritual or intellectual union which is to be done not by material but by moral instruments which can eternally return and be effective when they do[u]."

It is obvious to remark, that the argument of the bishop proceeds principally on the common misapprehension of the language and doctrine of the apostle[x], in his discourse of the unequal marriages of the believing with the unbelieving; and that no communication with a harlot, in the ordinary acceptation of the term, can constitute that unity of flesh which is ascribed to marriage in the terms of the divine institution. The mere intercourse of a married man with a woman to whom he is not married, cannot appropriate to the woman any portion of the nuptial union, or be in itself an act of divorce and dissolution of the bond of marriage: for upon that hypothesis, not only as is admitted by the bishop, would each succeeding wife of a polygamist seize to herself the privileges of the former wife: not only would Leah forfeit her rights to Rachel, but the rights of the wives would be prostrate before the rights of the concubines; the

[u] Ductor Dubitantium, b. i. c. 5. rule 8. [x] 1 Cor. vi. 16.

injury of the wives would devolve upon their children; and the inheritance of the patriarchs would be thrown into irretrievable confusion. The gift of Hagar to Abraham did not dissolve the matrimonial union of Abraham with Sarah; nor did Saul's transfer of Michal his daughter from David to Phaltiel abrogate the title of David to his wife[y].

Under the hypothesis that adultery is a virtual dissolution of the conjugal union, it will not be denied, that being committed by the one party, it may be concealed from the other, and form no impediment to their continued cohabitation. Are the children, born of parents thus cohabiting, after adultery, according to the hypothesis, has dissolved the matrimonial union, born in marriage? If it is answered that they are born in marriage, the answer tacitly implies, that adultery does not in itself dissolve the bond of marriage: if the answer is qualified, and it is argued that adultery does not of itself dissolve the bond, without the legal interposition of a court of competent jurisdiction, then it is plain that the aid of authority is required to give the dissolving effect to the act of adultery; and there is room for enquiry into the ground and origin, the right and reason, and the practical extent of this authority.

"It is to be observed, that adultery of itself does not operate a dissolution of the marriage; it is merely the mean or ground of seeking a dissolution of it. The action of divorce itself is of the nature of a pure personal cause of complaint, which neither the public nor any third party upon even the strong-

[y] 2 Sam. iii. 14.

est ground of patrimonial interest, will be allowed to plead. . . . Divorce is a remedy which the injured party alone can seek; and if that party is willing to abstain from demanding it, the marriage will still subsist, and the rights and privileges of the parties will remain the same, just as if the adultery had never been committed[z]." The dissolution of the marriage will also be prevented by collusion of the parties, *remissio injuriæ*, and other personal bars which are admitted exceptions to the action of divorce.

But the strongest proof that the act of adultery does not dissolve the bond of marriage, or justify the other party in presuming to dissolve the bond by any private act, is founded on the legal doctrine of compensation, or the allegation of proof that the plaintiff or "promoter, whether previously or subsequently to the infidelity of the party accused, whether before the commencement, or at any time during the dependence, of the suit, has also committed the like offence; in which case the parties are *in eodem delicto*, and the party cited is dismissed from all observance of justice as respects the particular grievance complained of, and consequently stands, in point of the relative rights of matrimony, as though no offence had been committed." Even if the husband should be living separate from the wife in consequence of her adultery, adultery committed by him during such separation would be so complete a compensation of her offence, as to bar him of his remedy, as to render him liable to all the claims of

[z] Fergusson, 317.

a licentious wife and a spurious issue, and to subject him to an action for the restitution of conjugal rights, which would terminate in obliging him to receive his wife, and to treat her with conjugal affection[a]. It is impossible to reconcile this state of the law with the plea that adultery is a virtual dissolution of the bond of marriage; under which it must be dissolved by the first offence; and being dissolved by the act of the one party, it could not claim the observance of the other. It is impossible to suppose that an act cancelled by the infidelity of one party can be restored to its original validity by the infidelity of the other; that in a mutual covenant between two parties, it is in the power of either, by a specific act, to destroy the obligation upon both; but that the concurrence of both parties, whether simultaneous or successive in similar acts, shall result in the interminable renewal of the obligation.

The plea is in direct opposition to the ordinary practice of the English courts in suits of divorce on the ground of adultery, in which sentence of separation *a mensâ et thoro* is granted, upon the condition that the parties shall not enter into other marriages, (which marriages would be void,) in contemplation of their reconciliation, an issue which is as impossible as the caution is unnecessary, if the act of adultery had already dissolved the bond. On this supposition, the only condition of divorce would be the act of adultery and proof of the act: but instead of this simple process, the courts must wait the

[a] Poynter's Doctrine and Practice of the Eccl. Courts, p. 79, 81. Fergusson, 351.

discretion of the injured party in making the complaint, and the injured party is dependent on the view which the court may take, not of the simple fact, but of the circumstances under which the act was committed, and under which the accusation is brought; and the result is not a recognition of the dissolution of the bond, but a partial separation, directed prospectively to the reconciliation of the parties, and founded on the continuance and the indissolubility of the bond of marriage.

The doctrine, that adultery of itself and in its own nature is a virtual dissolution of the bond of marriage, is not authorized by a just exposition of the Scriptures: it is opposed to the received law and practice of the courts, and it involves the most fearful consequences and the most striking inconsistency. It precludes the possibility of reconciliation; it renders repentance unavailing and forgiveness impracticable: it takes away all distinction between the boldness which triumphs in vice, and the returning sense of propriety which would make every atonement for the offence; between the exasperated spirit which spurns the offender and hurries to its revenge, and the compassionate forbearance which in remembrance of former affection waits in patient hope for the effects of penitence and contrition. If the bond is broken by the adulterous act, there are no means by which it can be renewed or repaired; nor any principle upon which the continued intercourse of the parties can be justified or approved. It would convey to either party a power, and offer a temptation, to dissolve a union which may be disagreeable; and to seek an engagement which pro-

mises more happiness, by an act of sin; and allow the guilty to take advantage of his own wrong: and if a restriction should be placed upon the criminal party, for which, if the bond of marriage is dissolved by the offence, there is no pretext, it would leave the same obligation in force upon the one party and not in force upon the other; it would take from the guilty the very name of marriage, and give to the innocent a licence of bigamy. It is opposite to the nature of marriage, considered as a civil contract, to suppose that it may be dissolved by the adulterous act of either party, not only without the concurrence, but in defiance of the will, of the other: and lastly, if adultery be a dissolution of the bond, the marriage may be dissolved by the criminal act of either party: the claim and licence of divorce is no more restricted, as it has been usually restricted, to the man; but is thrown open indiscriminately and without any limitations; and the bond of marriage is rendered the bond which beyond all others it is most easy to dissolve.

These are some of the objections against the principle of making adultery, of itself and in its own nature, a virtual dissolution of the bond of marriage; and it is conceived, that these objections will not be easily removed: and if adultery be not a dissolution of the bond, and a sufficient principle of divorce, it is vain to seek the principle in any other offence.

It is admitted, that in death there is an actual dissolution of the bond of marriage: but against the exclusive use of this position it has been argued with extraordinary flippancy, that men sometimes inflict

death upon men, and that although this is done solely by the permission of God, who in this case appears rather to cut than to dissolve the bond of marriage: hence may be drawn the singular conclusion, that marriage is dissolved in as many methods as are permitted by the Deity; and there is room for the enquiry whether it may not be dissolved in other manners also. Such was the littleness to which the mind even of Beza[b] could resort, in arguing against the indissolubility of marriage, as founded in the divine institution. He might have remembered that death necessarily precludes a second marriage during the life of the parties.

Adultery, as the violation of a divine institution and the transgression of a divine commandment, is unquestionably a sin against God, a sin which more than any other sin he has upon various occasions interfered to prevent, to threaten, and to punish; upon which, under the law of Moses, he pronounced the last penalty; and which for a long series of years he punished by a most extraordinary and miraculous intervention. In the minute gradations of punishment denounced on the various kinds of debauchery, death is the only punishment of adultery recognized in the law of Moses. There is not an allusion to any other punishment of persons convicted of adultery: there is not the most distant intimation of divorce, as the arbitrary or judicial consequence of matrimonial infidelity. When the case of the woman taken in adultery was submitted to our Lord[c], he neither disapproved nor rescinded

[b] De Repudiis. [c] John viii. 3—11.

the capital penalty prescribed by the ancient laws, to both of which he appears to have alluded in the sentence, Let him that is without sin, and can fulfil the condition required in the law of the bitter waters, cast the first stone at her, and execute the law of adultery. From the moral deficiency of her accusers he did not himself condemn her, nor did he take upon himself the office of a temporal judge: but he did not recommend any more lenient course than that which the law ordained; he did not suggest to the husband that there was the easy remedy of divorce; he did not advise the separation of the parties, as if the adultery (of which the fact was insinuated in the exhortation, Sin no more;) had effected a dissolution of the bond of marriage.

Death is the only punishment of adultery recognized in the Jewish Scriptures. When David inflicted upon his concubines a rigorous and perpetual confinement, he was restrained by his own conscience and the sense of the divine judgments from bringing them to capital punishment: but it did not enter into his contemplation to divorce them; nor could the wives of a king have become the wives of a subject[d]. Neither had he the power to take Abishag the Shunamite to wife, because the number of the king's wives was limited, and he was not at liberty to divorce them[e]. In process of time, when the punishment of death for adultery had fallen into disuse, and had ceased to be administered by the

[d] 2 Sam. xx. 3. Cf. 2 Sam. xii. 11. Anc. Univ. Hist. vol. iii. p. 148.

[e] 1 Kings i. 3, 4. See Ux. Ebr. l. iii. c. 19.

Jews; when the law of the bitter waters was inoperative, and the subtlety of Jewish commentators had collected from that law many licences of divorce[f]; when the husband was unwilling to proceed to extremities, or unable to produce the proof which was required in the case of adultery, he availed himself of a common liberty to put away his wife arbitrarily and without assigning any reason for the divorce. Joseph, if he had not been prevented by the vision, would have made use of this privilege when he was minded to put away his wife privily[g], because though he himself was a just man, and therefore could not consent to the dishonour of his betrothed wife, he was nevertheless unwilling to make her a public example, by bringing forward the proof which the case was supposed to admit. It is obvious however, that these private divorces cannot be considered in the light of legal consequences, or punishments of adultery, because they were evasions of the law of adultery; they waived the proof upon which alone the conviction of the adulterer depended: and it is a circumstance too important to be overlooked, that divorce was so far from being the issue of adultery, that adultery was excepted among the causes and occasions of divorce, because, as the Jewish doctors maintained, there was another remedy in the case of adultery.

This opinion of the Jewish doctors may serve to obviate the hasty inference, that if the Lord commanded that the adulteress should be stoned, he much more intended that she should be divorced.

[f] See Ainsworth in Numbers v. 11—31. [g] Matt. i. 19.

It has been argued, in reply to this position, that the capital punishment requires legal conviction and public judgment; that the judge is bound to administer the law in its positive enactments, not in its remote inferences and conclusions; that the husband is under no obligation to accuse the wife; that he is free to pardon her, or to put her away privately; and that it was not unlawful to retain her in the hope of her recovery and repentance[h]. The sentence upon adultery relates to the duty of the judge before whom the case is brought, not to the individual who suffers the wrong[i]: and this sentence includes in its demands the adulterer and the adulteress, and cannot by any parity of reasoning be applied to the practice of divorce, which was principally the act of the man, and of which adultery was not the cause. The law of adultery was in itself a rigorous law, and its rigour may probably have been intended, that there might be no appeal to its judgments but in cases of aggravated necessity, under a conviction that there could be no mitigation of its penalties if the offence was proved: but if the husband, under any circumstances, or from any private motive, was unwilling to resort to this law, he had no authority, however he might presume of himself, to argue upon the intentions of the Deity, or to seize to himself the execution of laws which were not delivered, or which had no reference to his case. God has commanded that the blood of the murderer shall be shed by man: but if man refuses to shed the blood of the murderer, and assumes a right of

[h] Ductor Dubitantium, b. i. c. 5. rule 8. [i] Beza de Divortiis.

inflicting the lighter punishments of mutilation, imprisonment, or confiscation, however he may flatter himself in his humanity and compassion, he has no more the sanction of divine authority, or of any legitimate inference from that authority, for the penalty which he is willing to exact. So the divine law has commanded that the adulterer and the adulteress shall be stoned, and the fulfilment of that law was, even in Beza's judgment, the most effective means of superseding all the difficulties of divorce: but there is not the remotest connexion between that divine rule and the human assumption of the licence of divorce. It may not be necessary to exact the penalties of that law; but, when the appeal is made to that law, there is no extenuation of its severity: and the inference which is claimed in favour of another system is liable to the objection, that there is no power under the law of divorce to divorce the adulterer, and that there is no authority under the law of adultery for the partial divorce of the adulteress.

What then is the origin of the law of divorce, which, with more or less of restriction, has from a very early period prevailed in most countries of the world. It has been asserted[k], that the law of divorce is a natural right, traditionally derived from the law delivered to Noah, an assertion which there is the highest and the best authority for contradicting. It was not so from the beginning[l]. It is reasonable to suppose, that any exceptions to the primary record would have been as distinctly noticed as the permis-

[k] Ux. Ebr. l. iii. c. 22, 26. [l] Matt. xix. 8.

sive law of divorce, delivered by Moses: and no tradition however ancient, no practice however universal, which is not supported by a positive revocation of the original law, can be put in competition with the terms of the original law, recorded by Moses, and repeated by our Lord and the apostle[m], in proof that the true rule of marriage has always been, that the man shall cleave unto his wife, and they two shall be one flesh: wherefore they are no more twain, but one flesh: what therefore God hath joined together, let not man put asunder. The licence of divorce therefore, so far from being a natural right, is in opposition to the first law delivered to man, as a social being, and is a licence of which there is a primeval prohibition conveyed in the original terms, and not counteracted by any subsequent provision. "It must be recollected, that divorce is in reality a deviation from the original institution of marriage, which was intended to be perpetual. The perpetuity of marriage, says Lord Stair, is evident, and the dissolution of it is only natural by death[n]."

It is not easy to ascertain at what period this licence of divorce was assumed. It was the opinion of the learned father, Jerome[o], that, so far from being an original right, it was not given before the flood, or before the law, but was introduced after the deluge, as was the permission to feed upon flesh. There is no reason to believe that the patriarchs were acquainted with the practice; they lived in

[m] Gen. ii. 24. Matt. xix. 5. Mark x. 7, 8. Ephes. v. 31.
[n] Fergusson, 353. [o] Adv. Jovinian, l. i. apud Selden.

polygamy, but there is no record that divorce was known among them. Abraham did not divorce Sarah, although she bore him not the son, whom he so passionately desired, nor was he permitted to alienate her to Pharaoh or to Abimelech, although his life was endangered by retaining her. Rebekah did not desire that even Esau should be divorced from his wives, although she grieved that they were of the daughters of the land; nor did Esau attempt to recover her favour by their repudiation: nor did Jacob think of divorcing Leah, although she was imposed upon him fraudulently and without his consent, and he hated her in comparison with Rachel. Hagar, whom Abraham put away, was not his wife; and it is but an apocryphal fable, which the Jewish paraphrast has invented, concerning the divorce of the Ethiopian woman or Tharbi from Moses[p].

There is extant a record of remote antiquity, collected from the astrological tables of the Chaldeans and Egyptians, which affirm[q] the permanence of the marriage of parties in whose nativity there is a certain configuration of the heavenly luminaries, and the easy dissolution, upon any pretext, of those marriages in which there is a variation in the position of the stars. It will not be denied, that the invention of such principles of divorce is the arbitrary assumption of human folly: but it would be

[p] Ux. Ebr. l. iii. c. 26. Anc. Univ. Hist. vol. iii. p. 147.

[q] *Διαμενουσιν, ὡς ἐπιπαν αἱ συμβιωσεις, ὁταν αμφοτερων των γενεσιων τα φωτα συσχηματιζομενα τυχῃ συμφωνως . . . διαλυονται δε ικ των τυχοντων και απαλλοτριουνται τελειων, ὁταν αἱ προειρημεναι των φωτων στασεις η εν ασυνδετοις ζωδιοις τυχωσιν η κ. τ. λ.* Cl. Ptolem. apud Selden. Ux. Ebr. l. iii. c. 22.

vain to affirm, that this was the origin of divorce, or that the Jews learned the practice from the Egyptians. All that can be asserted with confidence is, that Moses permitted divorce, and that, in adding the requisition of the bill of divorce, he restricted the licence, and distinguished the practice, of the Jews from the practice of other nations[r]. The permission which was given to the Jews was extorted by the hardness of their hearts, which Moses at once indulged and restrained.

The first authentic law of divorce upon record is the restrictive law delivered by Moses[s]: When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her[t], then let him write her a bill of divorcement, and give it in her hand, and send her out of his house: and when she is departed out of his house, she may go and be another man's wife: and if the latter husband hate her, and write her a bill of divorcement, and give it in her hand, and send her out of his house; or if the latter husband die, which took her to be his wife, her former husband, which sent her away, may not take her again to be his wife, after that she is defiled[u], for

[r] Ux. Ebr. l. iii. c. 22. [s] Deut. xxiv. 1—4.

[t] "Understand from the former verse, *And if he shall write;* for this is not a commandment, but a permission, as our Saviour saith. Matt. xix. 8. So after, in ver. 3. *And the latter man shall hate her,* that is, *if he shall hate her;* for all is supposition and permission until ver. 4. where she is forbidden to her first husband." Ainsworth in loc.

[u] *She is caused to be defiled,* or, *is caused to defile herself.* The Greek and Chaldee translate *she is defiled;* but the Hebrew

that is abomination before the Lord; and thou shalt not cause the land to sin, which the Lord thy God giveth thee for an inheritance.

If no divine commentary had been delivered upon the merits of this first authentic law of divorce, and if no notice had been taken of it in any other part of the Scriptures, it would have been justly described as a permissive, restrictive, and remedial law, designed for the prevention of greater offences. Our Saviour hath confirmed this view of it, by asserting, that it was given to the Jews by Moses in contravention of the primitive institution, for the hardness of their hearts. It was not a law which the better part of the Jews approved, or of which the sacred writers thought fit to record the practice, and an interval of seven hundred years elapsed between its publication and any allusion to it in the Scriptures. The Levite did not divorce his concubine-wife, who forsook him, but demanded her again; Samson also demanded his wife, after she had been given to another man; and the only case of divorce recorded in the Old Testament is that of the men who put away their foreign wives, whom they had married during the captivity[x]. It was in the prophecies of Isaiah that the first allusion is made to the bill of divorcement; and it was by Jeremiah that the Lord,

word *Hattaamah* is of such composition as implieth both the defiling of herself and the cause thereof by her husband who put her away first. It was therefore an error in the Jews to take this for a commandment of God, which he tolerated only for the hardness of their hearts, and shewed the woman to be defiled by her second marriage after her first unjust divorce." Ibid.

[x] Judges xix. 1. xv. 1. Ezra x. Anc. Univ. Hist. vol. iii. p. 148.

reproving the idolatries of his Church, and threatening to take vengeance of them, introduces himself in the character of a husband refusing to take advantage of this law, under which he might have divorced a wife that was disagreeable to him, upon condition of abandoning her for ever[y]. The same allusion afterwards became frequent in the prophetical writings; but although the Lord, in condescension to man's infirmity, expressed himself in language which the manners of the age had rendered but too easy to be understood, these frequent allusions proved rather the prevalence, than the divine approbation, of the practice, and it certainly received no countenance from the conduct of the Lord in respect of his Church. The prophet Malachi, in the name of the Lord, strongly protested against these excesses and abuses of the law of divorce, at a time when it was not uncommon with the Jews to put away their native wives, and marry the daughters of the heathen: Judah hath dealt treacherously, and an abomination is committed in Israel and in Jerusalem: for Judah hath profaned the holiness of the Lord which he loved, and hath married the daughter of a strange god. The Lord will cut off the man that doeth this, the master and the scholar, out of the tabernacle of Jacob, and him that offereth an offering unto the Lord of Hosts. And this have ye done again, covering the altar of the Lord with tears, with weeping, and with crying out, insomuch that he regardeth not the offering any more, or receiveth it with good will at your hands. Yet ye

[y] Isaiah l. i. Jerem. iii. 1.

say, Wherefore? Because the Lord hath been witness between thee and the wife of thy youth, against whom thou hast dealt treacherously: yet she is thy companion, and the wife of thy covenant. And did not he make one? Yet had he the residue of the Spirit. And wherefore one? That he might seek a godly seed. Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth: for the Lord, the God of Israel, saith, that he hateth putting away; for one covereth violence with his garment, saith the Lord of Hosts: therefore take heed to your spirit, that ye deal not treacherously[z]. The expression of the wife of youth means the first wife, and the divorce of the first wife was reckoned so aggravated an offence, that, in the judgment of the Jews, the altar shed tears upon the occasion: and it is to this offence that the prophet is supposed to allude, when he speaks of covering the altar of the Lord with tears, and with weeping, and with crying out. There is an ambiguity in one sentence of this passage, and the words admit of different interpretations; but in either interpretation they condemn the practice of divorce, whether the Lord saith absolutely that he hateth divorce, or whether he pronounces it to be only a less evil than retaining a wife in hatred: If he hate her, put her away. In the latter interpretation the doctrine of the prophet coincides with the position of our Lord, that the law of divorce was given to the people for the hardness of their hearts.

It was a common opinion of the primitive Church,

[z] Malachi ii. 11—16.

founded on the declaration of our Lord, that the law of divorce did not originate in the will of the Deity; and that the divine Author of marriage reserved to himself the power of separation, not by the hard measure of divorce, which he at once condemns and mitigates, but by the death which is due from all men[a]. It was held upon the same principle, that Moses delivered the law of divorce of his own authority, and on account of the hardness of the heart of the people; not that God either recommended divorce or willed it to be[b]: and that Moses, like Paul, being divinely inspired and invested with the power of making laws, permitted certain things to the people, (and especially the power of divorce, in accommodation to the hardness of their hearts,) in which it was lawful to obey him, although he legislated of his own authority; because his power of legislation was accompanied by the Spirit of God[c]. The same opinion was more fully expressed by Ptolemæus[d], one of the earliest of the writers who

[a] Tert. de Monogam. s. 9. To marriage may be applied the beautiful expressions of Cicero, concerning the dissolution of the human body. Opus ipsa suum eadem, quæ coagmentavit, natura dissolvit. Ut navem, ut ædificium idem destruit facillime, qui construxit, sic hominem optime eadem, quæ conglutinavit, natura dissolvit. Jam omnis conglutinatio recens ægre, inveterata facile divellitur. De Senect. s. 20.

[b] Origen. in Num. Hom. xvi. s. 4.

[c] Origen. Com. in Matt. tom. xii. s. 18.

[d] Apud Grabe, Spicileg. vol. ii. p. 72. He is arguing upon the position, that the precepts of the law are to be ascribed by a threefold division to the Deity, to Moses, and to the elders: and having recited Matt. xix. 6, &c. he proceeds with the commentary recited.

have borne the name of heretics, who in commenting upon the text of our Lord, argues, that our Lord shews the law of God in forbidding divorce to be different from the law of Moses, who permitted the bond to be dissolved for the hardness of the heart of the people. In this respect the law of Moses is at variance with the law of God; for it counteracts the prohibition of divorce. If the intention of Moses in making this law be examined, he will be found to have acted not from choice but necessity, and in accommodation to the weakness of the people to whom he gave the law: for since they were not able to keep the commandment of God, and to refrain from divorcing their wives with whom they lived unpleasantly, and were in danger upon that account of acting with more injustice, and falling into destruction, it was the design of Moses to cut off an offence which threatened ruin, and to substitute, according to the occasion, a less evil for a greater, by introducing of himself the law of divorce; that if they could not keep the one law, they might at least keep the other, and be restrained from that iniquity and sin, which could only terminate in their entire destruction. This was the design of Moses in making a law in opposition to God.

But whatever be the origin of the Mosaic law of divorce; whether it was dictated and suggested, or only approved, by the Spirit of God; its plain characters are, that it is remedial; palliative of the severer laws which had been delivered concerning the punishment of adultery, and the law of the bitter waters, designed to counteract their effect and prevent their abuse; distinguished from other laws of

divorce by the introduction of the bill of divorcement, and the prohibition to resume the woman once divorced; and probably intended as an interpretative law to regulate, and not as an original law to authorize, the practice of divorce, which previously existed, and to which allusions had been made in the injunction upon the priest not to marry a woman divorced, and in the denial of the licence of divorce to the man who brought a false accusation against his bride, and to the man who was constrained to marry the woman whom he had debauched. This law was also a permissive not a preceptive law; it permitted what it did not command. It was a preventive law; forbidding the precipitate and angry divorce of the woman, without a writing of divorcement, which could not be prepared without deliberation, nor delivered into her hand without affording an opportunity of compunction and reconciliation. This law was favourable to the woman, in releasing her from a husband who might use her unkindly, and permitting her to marry another man. If the second husband hated her, he also might give her a bill of divorce: but until the bill was delivered, the divorce was not complete, and the woman was not at liberty to marry again; and thus she was restrained from quitting her husband. The bill of divorcement was a protection to the woman under any imputation which the malice of her enemies might bring against her. The bill once delivered was irrevocable; and thus the feelings and delicacy of the sex were consulted. The man who had once given to his wife a bill of divorcement, could upon no occasion be united to her again; a wholesome

provision, which prevented the prostitution of a wife under the name of a divorce, and the corrupt practice of usurary wives, which prevailed among the heathens; and required the divorcing party to reflect maturely, whether he would consent to a divorce which it would never be in his power to recall.

The Jews were rigorous in upholding the strict intentions of this law, and in maintaining certain forms which they judged proper to give validity to the sentence of separation. They laid down ten principal rules, which they collected from the law of Moses, and which they held to be indispensable to its right administration. 1. The husband must give his voluntary consent to the divorce, although the divorce was not vitiated if this voluntary consent was extorted by corporal chastisement. The consent of the wife was not necessary. 2. The act of divorce could only be effected by writing. 3, 4. The bill must discharge the woman from the control of her husband, and the woman must be separated from her husband, beyond the power of reunion, and receive full liberty to marry another man. 5. The bill must be written in the name of the wife. 6. The bill must not only be written but delivered. 7. It must be delivered into the hands of the wife. 8. It must be delivered before witnesses, who might protect the woman under the imputation of adultery. 9. It must be delivered and received in the name of a bill of divorce. 10. The husband or his deputy must deliver the bill to the wife, and the divorce was not complete without such delivery. If this order was not observed, the divorce was imperfect; the wife was not properly or irrevocably separated from her former

husband; nor was her marriage with a second husband altogether valid. The Jews added of their own authority some additions concerning the insertion of time and place; concerning witnesses and deputies; and concerning the errors of notaries, and the forms of the letters. The bill of divorce was drawn in this form:

"In such a day of the week, in such a day of the month, N. in such a year, from the creation of the world, or from the supputation of Alexander, after the account which we are wont to count by, here in the place N. I, N. the son of N. of the place N. or if there be any other name or surname which I have or my fathers have had, or which my place hath or my father's place hath had, have voluntarily, with the willingness of my soul, without constraint, both dismissed, and left, and put away, thee, N. the daughter of N. of the city of N. or if thou hast any other name or surname, thou or thy fathers, or thy place or thy father's place, who hast been my wife heretofore; but now I dismiss thee, leave thee, and put thee away, that thou mayest be free and have power over thine own soul, to go away, to be married to any man whom thou wilt; and that no man be refused of thine hand for my name from this day and for ever. And thus thou art lawful for any man: and this bill is unto thee from me a writing of divorcement, and bill of dismission, and epistle of putting away, according to the law of Moses and Israel.

N. son of N. witness,
N. son of N. witness[e]."

[e] Ainsworth in Deut. xxiv. 1—4. Ux. Ebr. l. iii. c. 24, 25. Godwyn's Moses and Aaron, b. vi. c. 4.

The cause alleged for divorce in the law of Moses is, if the woman finds no favour in her husband's eyes, because he hath found some uncleanness in her. She finds no favour in his eyes if he dislikes her absolutely or in comparison with some other woman; and the uncleanness which he finds in her, according to some of the Jews, comprehended any cause of offence, while others restricted it to some particular cause, short only of incest and adultery. Abarbinel comprehends under it, either behaviour, which made her suspected; or difference of temper, which made her society disagreeable; or natural diseases, as leprosy, and even offensive breath[f].

In the time of our Lord, the extent of the licence of divorce was vehemently debated in the two schools of Hillel and Sammai. The school of Sammai restricted the right of divorce to uncleanness, (*turpitudo;*) the more relaxed school of Hillel extended it to any other cause. Of the latter school were, the philosopher Philo, who admits that women may be divorced for any cause; and the historian Josephus, who also asserts that there are many causes of divorce, and who bears record of himself, that he had separated from one wife soon after her marriage, and that not pleased with the manners of another, he had divorced her after she had borne him three children[g].

It would be vain to deny that there is a difficulty in the restrictive words used in the law of Moses, which admitted of evasion; and in process of time,

[f] Patrick in Deut. xxiv. 1—4. See also Anc. Univ. Hist. vol. iii. p. 147. [g] Ux. Ebr. l. iii. c. 20, 21.

the Jews, with their accustomed subtlety, instead of interpreting the law as one connected rule of a dislike founded in uncleanness, divided it into two separate parts, and made it one general rule of divorce, that the woman found no favour in her husband's eyes; and another, that he found some uncleanness in her. Under each head they introduced many specific causes; and in addition to their conclusions from the law of the bitter waters, they enlarged the grounds and increased the facilities of divorce.

There are some causes of divorce not contemplated in the law of Moses, which may be alleged in proof of the extent to which it was abused, without insisting upon those which fall more properly and naturally under the sentence; If the woman find no favour in his eyes because he hath found some uncleanness in her[h].

The man might divorce his wife, if there was no issue of the marriage within ten years; if he was too poor to supply her with food, clothing, and medicine; or if he was under an unredeemed vow to refuse clothing and food, to prohibit the seasonable access of friends, and to restrain her from public and solemn occasions of mourning and rejoicing. If under a vow he interdicted her from proper employments, he was obliged to pay her dower and divorce her, because the want of employment was esteemed prejudicial to virtue. If a Jew of the Holy Land should marry a woman in Assyria, Arabia, or Egypt, he had the option of bringing her with him to the

[h] Ux. Ebr. l. iii. c. 5, 6, 7, 8, 10.

Holy Land, or if she refused, of divorcing her without dower. If she was willing to accompany him, but he refused to admit her company, she might be divorced, but without loss or forfeiture of dower. If the woman was of the Holy Land, she might refuse to go with her husband into any other province; and if he divorced her, she might claim her dower: but the husband might compel her to change her residence with him in the same province, under penalty of divorce. A husband might not divorce a captive wife without redeeming her, unless the marriage had been originally unlawful, or she had fallen into captivity within a period in which he had intended to divorce her. In the case of a second captivity also he might divorce her, and on the payment of her dower leave her to redeem herself. The priest was required to redeem a wife that had fallen into captivity among the heathen, and he was also required to pay her dower and divorce her, for she had fallen into a state in which it was unlawful for him to retain her.

The law which restrained the priest from renewing his union with a wife who had been defiled, even by a compulsory residence among the heathen, attests the nature of the great separation of the strange wives under Ezra and Nehemiah, which proceeded upon the principle rather of a nullity in the original marriage than of a divorce or dissolution of the bond[1]. These marriages were invalid, because they were contracted in opposition to the express com-

[1] Ezra ix. x. Nehem. xiii. 19—27. Patrick and Poole's Synops. in loc.

mandment of God, in a renewed compliance with which the people consented to abandon their wives. This interpretation is confirmed by the treatment of the children, who upon Jewish principles inherited the condition of their heathen mothers, and were therefore rejected as aliens from the commonwealth of Israel.

In this view of the Jewish doctrine of divorce, nothing has appeared worthy to counteract the primary institution of the indissoluble perpetuity of marriage, or to give to divorce the character of an authorized principle or a natural right. The origin of divorce is buried in impenetrable obscurity; and the first law which is extant upon the subject is a law of restrictions, accommodated to the hardness of heart which it was intended to mitigate. The abuses of this law were condemned by the prophets, and it was incumbered by the Jewish doctors with many restrictive ceremonies, which were not abated or evaded but in the decay of Jewish discipline and virtue. The divorces, which were common among the Greeks and Romans, were equally deficient in point of principle and authority.

In the different states of Greece, different pretexts and rules of divorce were admitted. The Cretans allowed the privilege of divorce to the man who was apprehensive of too numerous a family by his wife; while the Lacedemonians, on the contrary, permitted Aristo to divorce his wife, because she was barren, although they can hardly be said to have approved the practice of divorce, since they fined Lysander for putting away his wife. The principles of the Athenians were more relaxed. They permitted di-

vorce on frivolous occasions; requiring, by a rule of Jewish origin, the exhibition of a bill stating the cause of divorce, which was subject to the approbation of the magistrate, if the party divorced should think fit to appeal. Women were not generally permitted to leave their husbands: but the Athenian law allowed them to appeal to the Archon, and to present a bill of grievances; and by thus demanding their personal appearance in the court, they afforded to the husbands an opportunity of remonstrating with their wives, and of endeavouring, by persuasion or by force, to retain them. Hipparate, the wife of Alcibiades, was impatient of his debauchery and conjugal infidelity, and withdrew to the house of her brother: but when she presented the necessary instruments to the Archon, Alcibiades forcibly carried her home, and she continued with him to her death. Husbands who divorced their wives, were required to return their portion, or constrained by the laws to supply them with alimony[k]. It was deemed dishonourable in a woman to forsake her husband, and it was customary to return the dower. It sometimes occurred, that the matrimonial union was dissolved by the consent of both parties, when they were at liberty to dispose of themselves in a second marriage. Plutarch mentions a case of this kind in the life of Pericles, who not being able to agree with his wife, parted with her to another man, and with her consent was himself united to the celebrated Aspasia.

So far divorce was a remedy which might be obtained with "some cost and inconvenience to the

[k] Ux. Ebr. l. iii. c. 27. Potter's Gr. Ant. b. iv. c. 12.

party, who might purchase it or not at his option: but in reference to adultery it assumed a very different aspect. In this case divorce was not optional, but compulsory. Demosthenes states, that the Grecian laws rendered it obligatory on a man to put away his wife after the discovery of an adulterous intercourse. No husband was allowed to live with his wife after she had defiled his bed; and if he did not put her away, but allowed his returning affection to prompt a condonation, he was to be termed ατιμος, infamous[l]."

The common method of divorce among the Romans was to send a bill to the woman, containing the reasons of the separation, and the tender of all her goods which she brought with her. This was termed *repudium mittere*. It was otherwise executed in her presence before sufficient witnesses, with the formalities of tearing the writings, refunding the portion, taking away the keys, and dismissing her from the house; in other words, discharging her from the service which she held under the Roman economy. A certain formulary, *res tuas tibi agito*, was pronounced by the husband, or, in the time of Juvenal, was delivered by a freedman. The more solemn marriages were dissolved by rites of an opposite tendency, called *diffarreatio*[m].

It has been remarked, that divorces are not usual in the early history of nations: in which the wife, as the mother of the children, is generally the person

[l] Tebbs's Essay on the Scripture Doctrines of Adultery and Divorce, p. 50—55.

[m] Adam's Roman Antiquities.

most proper to be intrusted with the office of rearing and maintaining them; and her services in other respects are afterwards too valuable to be dispensed with[n]: and thus there is a natural necessity for retaining the order of the divine institution, until the growth of luxury depraves the genuine manners and principles of men. It was consistent with this view of the state of primitive society, that Romulus ordained the indissolubility of marriage, in respect both of the man and the woman, by a law, requiring that married women should conform to the manners of their husbands, as having no other refuge to which they might turn themselves; and that the men should keep possession of their wives, as a property which is necessary, and from which they cannot be separated[o]. The law which required the Flamen Dialis to be the husband of but one wife, has also been deemed an example of the original indissolubility of marriage among the Romans. Plutarch has however recorded a law of Romulus, which he calls a hard law, and which suffered not a woman to leave her husband; but gave the man the liberty of divorcing his wife, who should be guilty of adultery, or of poisoning his children, or of counterfeiting his private keys. If however the husband should divorce his wife for any other cause than adultery, he forfeited one moiety of his estate to his wife, and another to the goddess Ceres; and he was commanded to offer an atonement to the gods of the earth[p].

[n] Millar's Origin of Ranks, p. 42. [o] Dion. Hal. Antiq. l. ii. Hooker's Eccl. Pol. b. v. [p] Kennett's Rom. Antiq. pt. ii. b. v. c. 9. Nuptiæ Sacræ, p. 20, 116.

There is a precision in this law, not consistent with the rude age of Romulus, the fierce manners of his subjects, or the arbitrary tyranny which the Roman husband held over the wife, and which would seek under the provocations alleged a more summary vengeance than is afforded in the process of divorce: and the question has been acutely asked by Gibbon, whence could the husband provide the sacrifice to the terrestrial gods, when both moieties of his estate had been otherwise appropriated[q]? The answer to the question will leave little doubt that the law was originally impracticable, or that the accounts which are extant of it are imperfect. If the wife was guilty of infidelity she forfeited her dower, which was restored to her if she was divorced without fault on her side. When the separation was voluntary on both sides she sometimes also retained the nuptial presents of her husband.

In the earlier ages of the republic a domestic tribunal was erected for the trial and redress of matrimonial disputes and offences: and "the ancient worship of the Romans afforded a peculiar goddess to hear and reconcile the complaints of married life: but her epithet of *Viriplaca*, the appeaser of husbands, too clearly indicates on which side submission and repentance were always expected. Every act of a citizen was subject to the judgment of the *censors;* the first who used the privilege of divorce assigned at their command the motives of his conduct[r], and a senator was expelled for dismissing his

[q] Rom. Empire, c. 44. Tebbs, p. 65.

[r] "Valerius Maximus, l. ii. c. 9. With some propriety he

virgin spouse without the knowledge or advice of his friends. Whenever an action was instituted for the recovery of a marriage portion, the *prætor*, as the guardian of equity examined the cause and the characters, and gently inclined the scale in favour of the guiltless and injured party. Augustus, who united the powers of both magistrates, adopted their different modes of repressing or chastising the licence of divorce. The presence of seven Roman witnesses was required for the validity of this solemn and deliberate act: if any adequate provocation had been given by the husband, instead of the delay of two years, he was compelled to refund immediately, or in the space of six months: but if he could arraign the manners of his wife, her guilt or levity was expiated by the loss of the sixth or eighth part of her marriage portion[s]."

In the equal progress of Roman dominion and profligacy the same privilege was granted to the women as to the men, and the licence of divorce was extended by the laws of the Twelve Tables, in imitation of the institutes of the Athenians. The fact has however been disputed; and it does not appear that they possessed this liberty even in the time of Plautus, except in the event of the husband's absence for a certain period, when they were free to marry another man. Afterwards wives divorced their husbands so frequently and with so little shame, that they were reproached with reckoning their years from the number, not of consuls, but

judges divorce more criminal than celibacy: illo namque conjugalia sacra spreta tantum, hoc etiam injuriose tractata."

[s] Gibbon's Rom. Emp. c. 44.

of husbands[t]. The practice was by no means respectable, but it continued to prevail notwithstanding the endeavours of Augustus and Domitian to restrict it[u].

A long period elapsed before the law of Romulus was brought into practice, and the first instance of divorce among the Romans is ascribed to the consulate of Albinus and Carvilius, (A. U. C. 525,) when the censors, observing that the number of the citizens was considerably lessened, and imputing it to men's marrying only with a view to interest, and afterwards deserting their wives and carrying on unlawful intrigues with other women, obliged the citizens to swear that they would not marry with any other view than that of increasing the subjects of the republic. This oath raised many scruples, and caused many ruptures between husbands and wives. Among the rest, one Carvilius Ruga, a man of distinction, thought himself bound by his oath to divorce his wife, who was barren, although he passionately loved her. He therefore put her away, and married another, and incurred the general odium of the people, who were equally offended at the act

[t] "Sic fiunt octo mariti,
Quinque per autumnos. Juv. Sat. vi. 20.

A rapid succession, which may yet be credible, as well as the non consulum numero sed maritorum annos suos computant, of Seneca, (De Beneficiis, iii. 16.) Jerome saw at Rome a triumphant husband bury his twenty-first wife, who had interred twenty-two of his less sturdy predecessors. Opp. tom. i. p. 190. ad Gerontiam. But the ten husbands in a month of the poet Martial is an extravagant hyperbole. l. vi. epigram 7." Gibbon.

[u] Adam's Roman Antiq. p. 468.

of the individual and the interference of the censors. At this time it is supposed that marriage contracts were introduced to secure the portions of women in the case of their divorce[x].

"The warmest applause has been lavished on the virtue of the Romans, who abstained from the exercise of this tempting privilege above five hundred years: but the same fact evinces the unequal terms of a connexion in which the slave was unable to renounce her tyrant, and the tyrant was unwilling to relinquish his slave. When the Roman matrons became the equal and voluntary companions of their lords a new jurisprudence was introduced, that marriage, like other partnerships, might be dissolved by the abdication of one of the associates. In three centuries of prosperity and corruption, this principle was enlarged to frequent practice and pernicious abuse. Passion, interest, or caprice, suggested daily motives for the dissolution of marriage: a word, a sign, a message, a letter, the mandate of a freedman, declared the separation; the most tender of human connexions was degraded to a transient society of profit or of pleasure. According to the various conditions of life, both sexes felt alternately the disgrace and injury; an inconstant spouse transferred her wealth to a new family, abandoning a numerous, perhaps a spurious, progeny to the paternal authority and care of her late husband; a beautiful virgin might be dismissed to the world, old, indigent, and friendless: but the reluctance of the Romans, when they were pressed to marriage by Augustus, suffi-

[x] Anc. Univ. Hist. vol. xii. p. 216.

ciently marks that the prevailing institutions were least favourable to the males. A specious theory is refuted by this free and perfect experiment, which demonstrates that the liberty of divorce does not contribute to happiness and virtue. The facility of divorce would destroy all mutual confidence, and inflame every trifling dispute: the minute difference between an husband and a stranger, which might so easily be removed, might still more easily be forgotten, and the matron who in five years can submit to the embraces of eight husbands must cease to reverence the chastity of her own person[7]."

The history of Roman divorce exhibits a practical argument in favour of the indissolubility of marriage. "The frequency of divorce among the Romans was attended with bad consequences, which were felt in every part of their domestic economy. As the husband and wife had a separation constantly in view, they could repose little confidence in each other, but were continually occupied by separate considerations of interest. In such a situation they were not likely to form a strong attachment, or to bestow much attention to the joint concerns of their family. So far otherwise, the practice of stealing from each other in expectation of a divorce became so general that it was not branded with the name of theft, but, like other fashionable vices, received a softening appellation. The action for the recovery of such stolen goods was not called *conditio furtiva*, but *actio rerum amotarum*.

"The bad agreement between married persons,

[7] Gibbon, Rom. Emp. c. 44.

together with the common infidelity of the wife, had a natural tendency to alienate the affections of a father from his children, and led him in many cases not only to neglect their education, but even to deprive them of their paternal inheritance[z]."

The causes of the dissolution of matrimony were restricted by Romulus to adultery, drunkenness, (or poisoning the children,) and falsification of the husband's keys: to these were added, barrenness, age, disease, madness, and banishment: and divorces were also made arbitrarily, and without assigning any reason for the act. Plutarch assigns the pretext of Cicero's divorcing Terentia, that she had sent Tullia to Brundusium in a mean equipage. Caius Sulpicius Gallus repudiated his wife because she had appeared in public with her head uncovered. Antistius Vetus divorced his wife because he had seen her in the street in conversation with a woman of infamous character. Sempronius Sophus dissolved the conjugal tie because his wife had gone to see the public games with her head uncovered[a]. Cæsar dismissed his wife on the pretence that the wife of Cæsar should not be suspected. Nero divorced Octavia for her sterility: and Augustus put away one of his wives because he did not like her temper. Sometimes the parties separated because they were tired of each other; this was called a divorce *bonâ gratiâ;* a *repudium sine ullâ querelâ:* perhaps the consul Æmilius is an instance of this: he dismissed a handsome and fruitful wife, and would assign no reason for it[b].

[z] Millar's Origin of Ranks, p. 104. [a] Valerius Maximus, l. vi. 3. recited in Gent. Mag. [b] Tebbs's Essay, p. 169.

Thus "the liberty of divorce was so much extended and abused, that among persons of condition marriage became a very slight and transient connexion. By the Roman law, about this period, divorces were granted upon any pretence whatever, and might be procured at the desire of either party. At the same time, the manners which produced this law, disposed the people very frequently to lay hold of the privilege which it gave them; insomuch that we read of few Romans of rank who had not been once divorced, if not oftener. To mention only persons of the gravest and most respectable character: M. Brutus repudiated his wife Claudia, though there was no stain upon her reputation. Cicero put away his wife Terentia, after she had lived with him thirty years; and also his second wife Publilia, whom he had married in his old age. His daughter Tullia was repudiated by Dolabella. Terentia, after she was divorced by Cicero, is said to have had three successive husbands, the first of whom was Cicero's enemy, Sallust the historian. M. Cato, after his wife had borne him three children, gave her away to his friend Hortensius. . . . As a further proof of the profligacy of that age, it is observed, that men were sometimes induced to marry from the prospect merely of enriching themselves by the forfeiture of the wife's dower when she committed adultery[c]."

It is not necessary to produce other proofs of the arbitrary capriciousness of divorce; and it may be useful to bring together the results of this examination of the progress of the law and licence of divorce

[c] "Valerius Max. l. vi. c. 3." Millar's Orig. of Ranks, p. 103.

before the time of Christ. It has been attempted to shew, that divorce is a counteraction of the perpetuity implied in the divine institution of marriage, and supported on reasons worthy of the divine wisdom and benevolence; that it defeats the principal ends and designs of marriage; that it is not the necessary consequence of adultery, nor the proper substitute for its capital penalty; and that it has no pretensions to be considered a principle of natural reason, or a right of social law. In all the obscurity of its surreptitious origin, it may be confidently affirmed, that it is not only destitute of the authority, but is opposed to the authority, of the law of God. The first law which is extant upon the subject was conceded to the hardness of heart, which it was designed to mitigate, and was in its very provisions restrictive and remedial; the neglect and abuse of these provisions called forth the strong animadversions of the prophets; and although they were enforced by many cautionary ceremonies prescribed by the Jewish teachers, the practical abuses of this law, and of the subtle inferences from the law of the bitter waters, proceeded, in defiance of every divine and human restriction, with the decay of the Jewish polity, to the most arbitrary and unjustifiable excess. The divorces of the Greeks and Romans have been shewn to be equally arbitrary and devoid of principle. In the best ages of the Roman republic, as in all primitive conditions of society, divorce was unknown: it followed in the train of luxury and moral and political degeneracy, producing the worst effects on domestic happiness and virtue, spurning the restraint of religion, reason, and law, and resting

upon pretences the most frivolous and unjust. If enquiry be made into the origin of divorce, it is the pride of man interfering with the institution of God; into its immediate motive, it is ungoverned passion; or into its direct tendency and operation, it is vice. In itself it possesses no advantage which can cover the obliquity of its principle, or the mischief of its effect: it has never proceeded but in opposition to the opinions, the laws, and the example, of wise and good men: its baneful tendency has challenged the censure of the infidel historian, who has pronounced, that, after the most free and perfect experiment, it has been demonstratively proved not to contribute to happiness and virtue: it has destroyed the virtue of individuals and the peace of states: and its unrestrained licence has been the common sign of ruined justice and declining empire. It is the wise aphorism of Selden, that there is the most indubitable wisdom in restraining the licence of divorce, whether respect be had to the restraint of passion, the maintenance of succession and inheritance, or the defence of the other interests of public peace and piety[d].

[d] Ux. Ebr. l. iii. c. 33.

SECTION II.

Restrictions involved in the received interpretation of the doctrine of divorce for adultery.

IT is of the highest importance to ascertain how far the views which have been taken of the Jewish law and practice of divorce are sanctioned by the comments of our Lord. In his discourse upon the mount he referred to this among various provisions of the law which were either deficient in principle, limited in extent, abused in practice, or corrupted by false glosses and interpretations. It hath been said, Whosoever shall put away his wife, let him give her a writing of divorcement: but I say unto you, Whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whosoever marrieth her that is divorced committeth adultery[a]. In this contrast of the law of Moses with the law of Christ, no merit is ascribed to the cautionary requisition of the bill of divorcement; no notice is taken of the popular dispute, whether there were more or fewer causes for which divorce should be allowed. These matters are dismissed as unworthy of the most cursory consideration; the whole law, as it existed in the practice of the Jews, is superseded and abolished; no imperative rule is substituted in its stead; the act of repeal is not qualified but by the insertion of a clause of exception, by which the divorce is exempted from certain

[a] Matt. v. 31, 32.

consequences, which are otherwise inseparable from it. With the only exception of the case of fornication, the parties could not be even separated without temptation to adultery; and they could not proceed to a second marriage without the actual commission of adultery. The man is charged with causing the woman to commit adultery, by putting her into a condition to marry again during his life: and even if she does not avail herself of the privilege, "reus tamen ille," says Lightfoot, and Origen held the same opinion fourteen centuries before him: "de omnibus dimissæ libidinosis æstuationibus, nam libidinose concupiscens mœchari dicitur[b]."

There was another occasion[c] upon which our Lord's opinion of the Jewish law was more fully and explicitly delivered. The controversy between the rival schools of Hillel and Sammai, on the extent of the privilege of divorce, was submitted to his judgment; and he was asked, with a secret intention of betraying him into an offensive answer, whether a man might divorce his wife for every cause. Instead of immediately and directly resolving the question, he confounded the enquirers by referring them to the original law and doctrine of marriage: Have ye not read, that he who made them at the beginning made them male and female? and said, For this cause shall a man leave father and mother, and cleave unto his wife, and they twain shall be one flesh. What therefore God hath joined together, let not man put asunder. The pharisees perceived that this reason-

[b] Lightfoot, Hor. Hebr. in Matt. v. 32. Origen, Com. in Matt. tom. xii. s. 24. [c] Matt. xix. 3—12.

ing was unanswerable; and that according to this primeval authority, and the just and natural inference which our Lord drew from it, there was originally no law or licence of divorce: but they thought to perplex him with an enquiry drawn from the permissive law of Moses; and therefore they said unto him, Why then, why, if no man may separate what God has united in marriage, did Moses, the prophet and messenger of God, command to give a writing of divorcement, and to put her away? This was a question which called for a direct opinion on the law of divorce delivered by Moses: and how was it resolved? He saith unto them, Moses, because of the hardness of your hearts, suffered you to put away your wives; but from the beginning[d] it was not so. In this sentence he taught that the law of divorce was not an original law, but a remedial provision, conceded to the Jews upon no better principle than the hardness of their hearts, for which they were permitted to put away their wives, rather than required to retain them in hatred and ill-will. Having thus adverted to the original institution of marriage, and to the hard necessity which introduced the permissive and remedial law of divorce, our Lord laid down his own rule: Whosoever shall put away

[d] Dr. Clarke supposes that the original words imply a reference to the Book of Genesis, which the Hebrews denominated, from its prefatory words, *Bereschith*, translated ἐν ἀρχῇ, intimating that the account given in *Genesis* was widely different, and that there was no divorce or polygamy in the first family. Tebbs's Essay, p. 80. But the words of Saint Matthew are, ἀπ' ἀρχῆς, and of St. Mark, ἀπὸ δὲ ἀρχῆς κτίσεως, referring evidently, not to the text, but the time.

his wife, except it be for fornication, and marrieth another, committeth adultery: and whosoever marrieth her that is put away committeth adultery.

In the narrative of Saint Mark[e], the discourse is reported with some trifling variations, which call for immediate notice; while those which are more important are reserved for separate consideration. The question of the pharisees is met by another question; as if it had been said, You ask me my law, and profess to consult me: but are you ignorant of the law of your own prophet, or not content to observe the rule which he has delivered? What did Moses command? They answered, Moses suffered to write a bill of divorce, and to put her away. In Saint Matthew's Gospel they say that this was commanded; and our Saviour allows that he suffered it[f]: and in fact there was both a permission and a commandment: the divorce was suffered, the instrument or bill of divorce was commanded. On this representation our Lord replies, that the licence was conceded to the hardness of their hearts, and contrary to the institution which had obtained from the beginning.

Our Lord therefore did not deliver his own new

[e] Mark x. 2—12.

[f] "Lege scilicet politicâ non morali, hæc enim perpetua est regula divinæ justitiæ, illa sese aliquando, ut regula Lesbia inflectit." Beza in Matt. xix. 8. "Repudia quæ lex toleravit, Deus nunquam probavit." Beza in Marc. x. 4. Schleusner interprets ἐντέλλομαι, as equivalent to ἐπιτρέπω. Is it possible, that our Lord, in the question, τι ὑμιν ἐνετείλατο Μωσης; explained (as of other texts by Schleusner,) What doctrine did Moses deliver? intended to refer them to Genesis rather than Deuteronomy, as in the question, Have ye not read, &c.?

rule, without pronouncing his opinion on the law which was already in force, or without declaring it to be a remedial law, brought in by the hardness of their hearts: a law which was so far from being a natural or an original law even of the Jewish polity and discipline, that it was contrary to the primitive law and institution of marriage. In both reports of the conference with the pharisees, our Lord confirmed his objection to the prevailing practice of the Jews, by drawing the strongest and most pointed contrast and comparison between marriage as a divine institution, and divorce as a human interposition with that divine institution[g]: What God hath joined together, let not man put asunder: and if under the name of man, or a man, he alluded to Moses, and his permission of divorce, he superseded that permission; or if the allusion was general, and not restricted by any particular reference, the prohibition was universal. With these marked and decided objections to the Jewish law, not in its maladministration and abuse, but in its best and simplest form, our Lord proceeded to deliver his own rule, and to restore the spirit of the original institution. Moses had permitted a liberty of divorce under certain regulations, restricted to a case of dislike founded in uncleanness; and this liberty had been accommodated, in the practice of the Jews as well as of the Gentiles, to comprehend almost every offence for which a man could pretend to dislike his wife. Our Lord explained the corrupt origin of this

[g] Beza (de Repudiis) allows, that the words exclude all causes of divorce besides that which is expressly allowed.

liberty; and restrained its future operations to the single case of fornication. He did not directly permit or command divorce in any case; but he briefly mentioned a particular case, in which consequences otherwise unavoidable would not attach. He did not, in reference to any circumstances, say imperatively, Put away your wives; or let them be put away: his doctrine was, that they could not be put away for any cause but fornication, without hazard of adultery: and hence the utmost inference which can be drawn is, that for fornication they may be put away, without incurring the imputation of adultery.

Four different cases of divorce are proposed by our Lord, and they embrace the chief varieties of illegitimate divorce; 1. the case of a man divorcing his wife: Whosoever shall put away his wife, and marry another, committeth adultery[h]. 2. The case of a woman divorcing her husband: If a woman shall put away her husband, and marry another, she committeth adultery[i]. 3. The case of a man marrying a woman divorced: Whoso marrieth her that is put away, doth commit adultery[k]. 4. The case of a woman divorced, but not marrying again: Whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery[l], i. e. if she avails herself of the permission which he gives, and throws her into temptation if she does not marry. It is certain that our Lord gave no law or liberty of divorce, but by acquitting the divorce

[h] Matt. xix. 9. Mark x. 11. Luke xvi. 18. [i] Mark x. 12.
[k] Matt. v. 32. xix. 9. Luke xvi. 18. [l] Matt. v. 32.

under peculiar circumstances, of the charge of adultery, which would otherwise ensue: for where the exception operates, the consequences are removed; where the exception does not operate, the consequences remain: and therefore it was rightly judged by Tertullian; If a man marries a woman unlawfully divorced, supposing her to be divorced, he is an adulterer: for the matrimony remains which is not duly dissolved; and while the marriage remains, the woman cannot marry without adultery[m].

The word *fornication*, in the clause of exception, is ordinarily interpreted of adultery, which is conceived to be the only fornication of which married persons can be guilty. This exposition is received too generally and on too high authority to be treated with any disrespect, or to allow a hasty transition to the interpretation which it is intended to propose, without a mature consideration and a distinct assertion of the restrictive conclusions which may be drawn even from the common hypothesis.

It is usual with writers who insist upon the lawfulness of divorce for adultery, to understand the clause of exception in the several sentences in which it is not expressed, and to conclude that they all denote a divorce which is lawful, as well as a divorce which is not lawful. The licence of divorce is thus extended to several more cases than are admitted under a more rigorous interpretation, which allows immunity and redress to none but the injured husband. But before the usual interpretation is implicitly admitted, it is of importance to observe, that

[m] Adv. Marcion, l. iv. s. 34.

there is but one case in which the clause of exception is expressed, and that is the case of a man divorcing his wife: Whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery. If he puts away his wife for any other cause, he causes her to commit adultery, by exposing her to temptation, and putting her into a condition to marry again: and if he marries himself, he actually commits adultery. In either case the guilt or hazard of adultery is incurred; because, notwithstanding the pretended divorce, the obligation of the original marriage continues, and cannot be violated without adultery: it is only when fornication is the ground of divorce that this consequence is avoided.

In all the other sentences divorce is forbidden absolutely, and without any reservation expressed: and it is necessary to enquire, whether there is any peculiarity in the case to which the clause is applied, which appropriates and restricts the exception; and whether there is any deficiency in the statement of the other cases which needs to be supplied. In the first sentence in which the clause is inserted, the restrictive exception is indispensable: Whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: but if he puts her away for fornication, and if fornication means adultery, the divorce is obviously not the cause of the guilt, which is the occasion of the divorce. In respect also of the other text, in which the clause is inserted, it has been justly argued, that

"there is no opposition between the language of Saint Matthew and the other evangelists. Putting away one's wife is absolutely forbidden in all the passages. The exception for the cause of adultery does not allow it. For by the Mosaic law nobody was put away for adultery. The adulterous parties were not put away by divorce, but were put to death. There was no divorce for adultery. The interpretation of the passages in Saint Matthew appears to have been embarrassed by applying to the second clause, the exception which Christ confines to the first: Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery: (the case of fornication was excepted, because the adulterous wife having suffered death, the husband who married again was not guilty of adultery against her:) and whoso marrieth her which is put away, (except for adultery,) committeth adultery. The exception is inapplicable here, because it implies that a wife could be put away for adultery . . . . and that after being put away she might marry again, which the law precluded by her death. The misapplication of the exception to the second clause, seems to have led to an inference, that by the law of Christ a man may put away his wife, in the ordinary sense of the term, for adultery; though the exception, as made by Christ in the first charge, which derives its whole force from the death of the adulterous party, requires the very reverse of this inference[n]."

[n] Greek Original of the New Testament asserted by Bishop Burgess, p. xxxii.

If in the clause of exception our Lord intended any allusion to adultery, and especially to the capital punishment of adultery, the clause must necessarily be restricted to the first sentence, and can have no application to the second, which relates to the marriage of a divorced woman. All the other sentences, if there be no forcible insertion of the clause of exception, will be found to amount in perfect harmony to a general prohibition of divorce, and there will be no deficiency which demands the least interpolation. The express authority of Saint Matthew will govern the only case of exception, and the remaining sentences are perfect and complete in themselves. Let the sentences be all read, without the clause of exception, as general prohibitions and interdicts of divorce: Whosoever putteth away his wife causeth her to commit adultery: if he marries he commits adultery: the man who marries a divorced woman commits adultery: the woman who puts away her husband and marries another commits adultery. These are all propositions corresponding in universality of extent with each other: they are all suited to the occasion, directly replying to the question of the pharisees, which related not to divorce for adultery, but to divorce for every cause: they all coincide with the indissoluble unity of the conjugal relation, and with the unlimited rule; What God hath joined together, let not man put asunder. This interpretation is also agreeable to the use of the earliest fathers, who recite the clause in referring to the texts in which it is expressed, and not only omit it in adverting to the texts in which it is not found, but digress from the texts in which it is

wanting to argue upon those in which it occurs[o]. But in the argument which is constructed upon the interpolation of the clause of exception, it is forgotten, that the propositions are all originally not particular but general propositions; that the only limitation is contained in a clause of exception, inserted in a parenthesis, and, where it is inserted, applied originally and exclusively to the case of the injured husband, but used by the commentators and writers on divorce with such force as to convert a series of general affirmative propositions into a series of particular negative propositions. The rule of our Lord is, If a man divorces his wife and marries another, he commits adultery. The converse of the

[o] Chrysostom has been said (Nupt. Sacr. p. 68.) to have been "so struck with the necessity of applying the exception to both clauses, if to either, that in his account of the corresponding text, in Matt. v. he sometimes leaves it out altogether. He makes the two cases perfectly parallel, and proves that in his mind the reservation belonged either to the whole of the passage, or to no part of it." The argument would have been more relevant and more convincing, if it had exhibited proof of the insertion of the clause in the texts in which it is wanting. Some instances may be alleged of the precision of the earlier fathers in referring to the texts in question. Theophilus, Origen, Com. in Matt. tom. xiv. s. 24. and Tertullian de Monog. s. 9. De Pud. s. 16. quote Matt. v. 32, with the clause: Cyprian de Bono Pudicit. quotes Matt. xix. 9, with the clause. Tertullian ad Ux. l. ii. s. 2. quotes the clause without any context, but with sufficient allusion to Matt. xix. 9. Adv. Marcion. l. iv. s. 34. he recites Luke xvi. 18, without the clause, and in the process of his discourse quotes Matt. v. 32, with the clause. The point of his argument is directed against marriages after divorce, which he conceives to be granted upon the condition that no marriage shall follow the divorce.

rule maintained by expositors is, If he divorces an adulterous wife and marries another, he does not commit adultery.

It is the argument of a writer, *venerable* and venerated for virtue and learning, wherever his name is known, that the clause of exception must be understood "according to the common rule in parallel testimonies, that the fuller and more comprehensive passages shall supply those which are less explicit[p]." But in one sense at least the propositions are most comprehensive without the restrictive exception: and they are certainly more explicit, for the terms in which the clause is expressed are so ambiguous as rather to embarrass than define the sense.

It is further argued, that "it seems to be almost inconceivable, that the words in the latter clause, which I have restrained by the supplementary expression to the same case which is regarded in the former part of our Lord's sentence, i. e. to the case of divorce for insufficient reasons, can be considered absolutely, and therefore be applied to any other cause of divorce, whether for insufficient or sufficient causes. It is not to be imagined, that our Lord would introduce a new case or a general position in close connexion with the special circumstances he had just considered, and where the same parties too continued still under contemplation, without some mark of distinction to shew, that when speaking of the woman he then passed a different judgment. It is natural enough not to introduce words of limita-

[p] Christ. Remembrancer, vol. ii. p. 738.

tion or enlargement where the context shews the case to be the same; but it is utterly unnatural and improper to omit distinctions where a new case is suddenly introduced[q]." The advocates of divorce for adultery will not deny that all the propositions agree in proscribing divorce for insufficient causes: and the only doubt or question which is entertained in opposition to their opinion is, how far it is necessary to understand the clause of exception in the sentences in which it is not expressed so as to justify in all cases divorce for the sufficient cause of adultery. The exception, when it is expressed, refers entirely to the case of a man divorcing his wife; but when our Lord proceeds to introduce the new case of a divorced woman, he treats it generally, without limitation, and without any insinuation or allusion which can justify the supposition that he connected the sentence "with the special circumstances he had just considered, or that the same parties continued still under contemplation;" he does not say; He that divorces his wife causes her to commit adultery; and he that marries her, or that woman, or that man's divorced wife; but he that marries a divorced woman, any woman divorced from any husband, in the most general and indefinite form. The language of Saint Luke is equally unrestricted. Whatever opinion be formed of the grounds of the omission, the fact is unquestionable; the application of the exception to a particular case, and its separation from all the other cases, cannot have been without design.

[q] Christ. Remembrancer, vol. ii. p. 750.

Another writer admits the objection, and labours to refute it: "Perhaps it will be urged, that the former part of the passage is to be understood with a reserve, because that reserve is expressed: and the second generally, because it is generally stated. I answer, that such is not the method to be used on this occasion . . . the parties remaining under the same circumstances, the exception expressed in one place is only to be supplied word for word in the other. Whosoever putteth away his wife and marrieth another committeth adultery; and whoso marrieth her that is put away committeth adultery. These are general propositions, and they are reciprocally stated. But there is not the same completeness in the terms employed under each of them. The first is attended with the particular clause, except for fornication: this once expressed is dropped in the second. The mind is now prepared by the previous mention of it, and calls it in again, as a necessary and consequential part, to supply that fulness of meaning which the divine writer manifestly intended, and of which he had already given a leading indication[r]." The argument proceeds on the supposition that the two propositions are both general propositions, which is immediately counteracted by the admission that the first, containing the limitation, is a particular proposition. The reciprocity of statement appears to be grounded in the opinion that it is one and the same woman who is the subject of both propositions, an opinion which corresponds with the public version, but which has no foundation

[r] Nupt. Sacræ, p. 65, 69.

in the original. If the divine writer had intended that any fulness of meaning which he did not express should be understood, he would have attached the clause of exception to all the cases to which he meant that it should be appropriated. He would not have confined the expression of it to the one single case of a man divorcing his wife, and have taken advantage of a second occasion to enforce its application in that particular case, shewing its effects at one time upon the man, at another upon the woman. Such repetition and restriction, with the entire omission of the clause in reference to any other case, are indeed a leading indication of the writer's design.

If the clause of exception be exclusively appropriated to the sentences in which it is inserted, it is necessary to conclude, that the permissive licence of divorce is restricted to the man who can prove against his wife a case of fornication; and if that offence be not charged the wife cannot be separated from the husband, nor the husband from the wife, without danger of adultery, which is actually committed by the marriage of either during the life of the other. Thus the liberty of divorce is conceded only to the husband of the adulteress; and even Beza[s] concedes that if the texts of Mark and Luke are not supplied from the texts of Matthew, those texts have no reference to the doctrine of divorce for adultery.

But let the opposite interpretation be received, and let the clause of exception be understood in all the sentences in which it is not inserted, and let enquiry be made into the effect of the propositions

[s] De Repudiis et Divortiis.

thus restricted in proving the liberty of divorce for adultery. Whosoever putteth away his wife for the cause of fornication doth not cause her to commit adultery; nor does he commit adultery if he marries again. Whosoever marrieth her that is divorced for fornication doth not commit adultery: if a woman putteth away her husband for fornication and marrieth another, she doth not commit adultery. In this statement of the several cases, the law is evidently permissive, not imperative; hypothetical, not positive. In the retention of an adulterous wife no wrong is imputed; in her rejection no duty is recognized. The guilt of the party before the divorce has no effect but to vitiate the consequences which would otherwise follow the divorce. The consequence of adultery following an unlawful divorce is founded in the continuity of the bond of marriage, in which, notwithstanding the pretended divorce, the parties are still bound, and therefore cannot proceed to another marriage without incurring the guilt of adultery. It is upon this principle that adultery is made the consequence of unlawful divorce; and that this consequence may not be imputed to a lawful divorce, it is usual to suppose, that the adultery preceding the divorce dissolves the bond of marriage, and that the dissolution of the bond renders the parties free to separate from each other, and to enter into new marriages without hazard of adultery. It is remarkable, however, that the dissolution of the bond is maintained, not by contrasting the consequences of lawful and unlawful divorce, nor by insisting on the opposite meanings of the texts, as they are construed with or without the clause of

exception, but on an argument perfectly distinct, constructed on the act of the adulteress in alienating herself from her husband, and transferring her person to another man, and thus destroying the conjugal unity. The basis of this argument is a text the most irrelevant; for whatever be the meaning of the words; He that is joined to an harlot is one body[t]; they have certainly not the remotest reference to adultery. It is hardly necessary to state, that the whole of this argument was unknown to the writers of the three first centuries: Lactantius is the first writer who adverts, and he only adverts to the rupture of the bond by infidelity[u]. But if adultery be in itself a dissolution of the bond of marriage, it must be a dissolution under all circumstances; and, notwithstanding the fearful consequences with which the doctrine has been shewn to be pregnant, would the separation of the guilty from the innocent be merely permitted? Would it not rather have been commanded with all authority, and made a duty of moral obligation, founded in a natural sense of propriety? But in confutation as it were of the alleged dissolution of the bond, the divorce for adultery is so far from being commanded, that if the man does not separate from his wife he may continue the connexion without any imputation of offence, and the obligation of the bond of marriage, instead of being broken, is renewed and strengthened; not only in the inference of theologians from the sacred records;

[t] 1 Cor. vi. 16.

[u] Div. Inst. Epit. c. lxvi. "Ut nunquam conjugalis fœderis vinculum nisi quod perfidia ruperit, resolvatur."

not only in the doctrine of primitive writers anticipating the reconciliation and reunion of the parties; but in the daily practice of the courts of law, in which an act of condonation is made a permanent bar to a divorce.

Another argument has been drawn from the Jewish law of adultery for the dissolution of the matrimonial bond by adultery. "Death, and not divorce was the punishment of adultery by the Jewish law, and therefore it is manifest, without meddling with their punishments, which perhaps at the time when our Lord spake could not be enforced, that our Lord declared in general terms that adultery was that breach of the nuptial contract, and of the whole obligation of the marriage vow, which furnished a just cause for divorce[x]." But is it not precipitate to assume, not only the insertion of the clause, and its interpretation in the sense of adultery, but the substitution of divorce for the Jewish penalty of death, and the equal effect of both in the annihilation of the bond of marriage. Without this remote conclusion the argument is confessedly inapplicable. If divorce as the consequence, were coextensive with death as the punishment, of adultery, could it allow, as the text supposes, the adulteress to marry again? "I have no alternative but to suppose that our Lord might respect the disuse of that punishment at that time or in times to follow: but, as the supposition is gratuitous, I will not urge it[y]."

Such arguments are certainly not conclusive of the dissolution of the bond of marriage by adultery:

[x] Chr. Remembr. vol. ii. p. 740. [y] Ibid. p. 750.

and whether the clause of exception be or be not understood, there is certainly no obligation to the practice of divorce; it is merely a permissive law, limited to the use of the injured husband, if the clause of exception be restricted to the texts in which it is inserted, and only susceptible of a larger application, by the interpolation of the restricting or restricted clause.

Whatever be the meaning of the chief term in the clause of exception, the liberty of divorce is restricted by that term. The form of the clause, according to its scriptural use and meaning, is such as is exclusive, absolutely and not comparatively, of all other causes, and cannot be supposed to imply that a divorce for fornication is less offensive than a divorce for other causes. If other causes had been meant, the exception would have been expressed more generally, and not limited to one specific cause; nor is it usual, under the terms in question, to signify opposition or contrast, without the exhibition of both parts of the comparison. Such comparison of offences was not intended by our Lord, nor was it called for by the question of the pharisees, which professed not to enquire into the unlawful but the lawful causes of divorce, which were restricted by our Lord to the single case of fornication[p].

The usual interpretation of the clause of exception in the sense of adultery introduces a new and additional restriction, in the nature of the proof which is required of the guilt of the offending party. The Jews knew nothing of the crime of adultery by im-

[p] Gerhard de Conjugio, s. 564, 569.

plication or suspicion. It was only when direct proof was wanting that the husband was allowed to resort to the law of the bitter waters; to appeal to the omniscient Judge for the removal of suspicions which he could not substantiate; and to prove himself entitled to the redress of wrongs which he could not establish. In other cases the crime of adultery was to be proved by evidence; and in allowing a husband under his new law to divorce an adulterous wife, it could not be the intention of our Lord at once to relax the law of adultery delivered in their sacred records, and the practice of divorce as it was guarded by the Jewish writers; or to sanction an arbitrary licence of divorce for reasons which might satisfy an interested, a jealous, or offended husband; but which could not produce conviction in the court, in which the adultery must be alleged, and the divorce must be obtained. Whatever may be thought of the gratuitous and unsupported opinion of Philo, that adultery was of necessity punished with death, and that the husband was at liberty to slay the adulterer with impunity, divorce was a forensic matter: and although, under the abrogated practice of divorce for all but every cause, the husband was entitled to demand a divorce without assigning any reasons, and the court was unable to refuse his demand; yet when the law was renewed and invigorated, and adultery was made the only and exclusive cause of divorce, adultery did not lose its criminal character, and it was necessary to produce adequate proof of the offence, before a competent tribunal, before the remedy could be obtained. Under the old system, the woman's confession did not convict her of the

capital offence, although, in the artful interpretation of the Jews, it entitled the husband to a divorce, and deprived the woman of her dower. If it was our Lord's design to enforce and not to relax the law of divorce, he would hardly suffer the parties to be separated upon slighter testimony than was required to justify the infliction of the capital punishment.

But on the hypothesis that fornication means adultery, and that adultery justifies divorce and a liberty of marrying again, there is further necessity of a public trial, conviction, and judgment, without which, a person marrying either of the parties divorced, as well as the parties themselves, is liable to a charge of adultery. It is not enough that a man divorces his wife, or a woman her husband: it is necessary, for the validity of the future marriage, and for prevention of the adultery which might otherwise be imputed to that marriage, that the grounds of the divorce should be publicly known and approved. Divorce even for adultery cannot be the act of the individual: it is the judgment of the law, and the law decides upon evidence. Under the Jewish law a man might put away his wife for every cause, and they might proceed to new marriage, without enquiry and without imputation: but even the bill of divorcement, according to the requisition of the Jewish doctors, must be delivered before witnesses, who might protect the woman from a charge of adultery if she should marry again. Under the Christian law it cannot be less necessary to exhibit the true ground of separation, without which divorce

is the occasion of sin, and marriage following the divorce is actual sin.

The method of our Lord, in permitting divorce only by vitiating the consequences of divorce, is of the last importance, in proving what is commonly called the woman's right of recrimination. It was one principal part of our Lord's design in treating of marriage and divorce, to restore the equal rights of the man and the woman, as they were at the beginning; not to increase the facilities of divorce, but to revive the primitive doctrine of the perpetuity of the conjugal union. It is certain that the right of recrimination on the part of the woman was known to the Jews, and divinely authorized in the law of the bitter waters, of which it was one express condition, that the man should be guiltless from iniquity: a condition which the Jewish writers agree in interpreting of innocence of adultery, and to the want of which they are wont to ascribe both the general and particular suspension of the powers of this singular ordeal. In addition to his marital integrity, the husband was required to exercise a scrupulous jealousy over the conduct of his wife, and to forbid the access of any persons whose intentions he had reason to suspect; and unless he could prove that he had thus admonished his wife, he was precluded from the remedy which he desired. It is suggested by Patrick, that the prophet Hosea alludes to this trial of the bitter waters, and to the condition of marital integrity, which was necessary to the conviction of the wife, when he introduces the Lord pronouncing the sentence of judgment: I will not

punish your daughters when they commit whoredom, nor your spouses when they commit adultery; for themselves are separated with whores and they sacrifice with harlots[q]. The Jewish law of adultery contained in the bitter waters, did thus expressly admit the doctrine of recrimination; and the previous law, which pronounced a capital punishment equally on the adulterer and the adulteress, effectually prevented the accusations of a guilty husband.

In the writings of the New Testament there is at least no objection to this principle and law of recrimination; there is not the most distant notice of its repeal. It is the opinion of Lightfoot, that in the case of the woman taken in adultery there is a clear and strong allusion to the law of the bitter waters; and that both in his action and his posture our Lord condescended to a striking conformity with the rule prescribed to the judge in that trial. His sentence upon that occasion was, Let him that is without sin cast the first stone at her: and the reference to him that is without sin corresponds with the condition required in the Mosaic law, that the man should be guiltless from iniquity. In the paraphrase of Lightfoot, our Lord is represented hearing the accusation, and addressing the accusers in words to this effect: You have brought this woman before me under a charge of adultery: I appeal to your own law upon the subject, which requires the integrity of the accuser: I know your hearts as well as He to whom

[q] Hos. iv. 14. See Ainsworth and Patrick on Num. v. 31. Ux. Ebr. l. iii. c. 13, 14, 15.

the appeal is made in the bitter waters; and I demand of you, Are you guiltless of the sin of adultery? Are you yourselves in a moral condition to prosecute the woman to conviction? Let him that is guiltless, as that law requires the accuser to be, cast the first stone at her, and carry into execution the sentence which another law has pronounced on the offender[r]. In this exposition the passage throws considerable light on the doctrine of recrimination.

An argument yet more direct and more distinct may be drawn from those passages in which our Lord permits divorce for the cause of fornication by nullifying the consequences with which the divorce would otherwise be chargeable. In the two cases proposed in Saint Mark's Gospel, the right of recrimination is necessarily implied, for the consequences are absolutely incompatible with a state of guilt. Whosoever putteth away his wife, and marrieth another, committeth adultery: and if a woman shall put away her husband, and marry another, she committeth adultery[s]. The innocence of the divorcing party is supposed, or otherwise the guilt of adultery would be previous, not subsequent, to the divorce. It is true that the clause of exception is omitted; but as the commentators require, let it be inserted and interpreted of adultery, the effect will be the same. The propositions will then be reduced to this form: Whosoever putteth away his wife for adultery, and marrieth another, doth not commit adultery; and the woman who putteth away her husband for adultery, and marrieth another, doth not commit adul-

[r] Hor. Hebr. in Johan. viii. [s] Mark x. 11, 12.

tery. The first proposition is the exact converse of the words of Saint Matthew, on which the whole scheme of divorce for adultery is founded. But will the rule thus expressed admit the supposition of guilt in the divorcing party? Can it be said that an adulterer divorcing an adulteress and marrying again doth not commit adultery? or that an adulteress divorcing an adulterous husband and marrying again doth not commit adultery? It is in vain to pretend that it is the marriage after an illegal divorce which alone constitutes the adultery in contemplation: for it is impossible under any circumstances to maintain that an adulterer is not an adulterer, or doth not commit adultery. It is an equivocation, it is a solecism, which it is impious to fasten on the language of inspiration, but which is nevertheless inseparable from such expositions of the law and licence of divorce, as exclude the right of recrimination, and sanction a divorce of the accused, without demanding proof of the accuser's integrity.

Under any interpretation an equal privilege or an equal prohibition is assigned to both parties. If the clause of exception be not understood, the prohibition is universal, and cannot be violated by either party without sin. If the clause be understood, the man may put away his wife, and the wife her husband, without incurring the imputation of adultery which follows an unjust divorce.

The very principle upon which our Saviour founds his restriction of the law of divorce does also imply the right of recrimination. The principle is, What God hath joined together let not man put asunder. The only exceptions of which this rule admits are

the cases of those whom, by the impediment of an incestuous and unlawful marriage, God hath not joined together, and of those whom, according to the common argument, man, by adultery, and by divorce, in retribution of the adultery, hath put asunder. The innocence of the marriage following a lawful divorce is inferred from the dissolution of the first marriage by the act of adultery: but if the bond is indeed broken by the adulterous act, it is broken by the first offender, be that offender the husband or the wife: and that offender is responsible for the consequences of his own act, and cannot be permitted to break the bond himself, and then to come forward and plead for a divorce on the ground that the woman hath broken it. It was the argument of Lactantius, that, under the Christian scheme, the husband and the wife are incorporated with such equal privilege as to impute adultery to that party which first divides the conjugal union, and that the adulterous wife of an adulterous husband does not commit but retaliate the injury[t]. The adulterer cannot therefore complain, or seek the redress of wrongs which he has brought upon himself; which he has rather originated than sustained. It is no common authority which has pronounced of the woman that is unjustly divorced, Whoso putteth away his wife, except for the cause of fornication, causeth her to commit adultery, by putting her into a condition to marry during the life of her husband. But is this the height and aggravation of an adulterer's offending? Is it nothing that he was himself

[t] Div. Inst. l. vi. c. 23. See above, Vol. i. p. 426.

guilty of adultery before he divorced his wife; that as far as in him lay he put her asunder from him by the adultery; dissolving, as is pretended, the matrimonial bond before he applied the formal divorce? The temptation which the bill of divorce afforded could not exceed the temptation subsisting in the adulterous example. The principle of the divine union was, on the common hypothesis, destroyed in either case.

Thus the more carefully the law which our Saviour hath delivered, the cases which he hath proposed, and the principle upon which those cases are argued, be examined, the more evident will be the right of recrimination, especially if it is remembered, that he made no exception to the right involved in the preceding law of the bitter waters, or to that more ancient law which, by the capital punishment of adultery, deprived a convicted adulterer of the right of complaint and the capacity of redress.

It is generally admitted, that the bond of marriage is possessed of such permanence and force as to render marriage after an unlawful divorce an act of adultery: but it is at the same time contended, that the adultery, which alone is supposed to justify the divorce, is such an entire dissolution of the bond of marriage as to set the parties at liberty to marry again. The general difficulties of the question relating to the supposed dissolution of the bond of marriage by adultery have been again and again insisted upon, and need not now to be repeated, except as they are connected with the circumstances under which our Lord conferred with the Jews, in whose daily practice divorce implied a freedom to marry again. "The reference

to the Jews may serve to shew to what extent the sentence of divorce allowed by our Lord will reach; for the Jews never doubted of the liberty to marry after sentence of divorce, and therefore if our Lord be thought to decide the matter with any view at all to the received usage of his own time during his ministry it is plain that the liberty to marry is implied; and his silence on the point, when it was certainly understood in one way, becomes more than a negative argument in favour of that liberty[w]." The utmost force which can be given to this argument is counteracted by the objection, that the Jewish law of divorce was never conceded but for hardness of heart; that divorce was reproved by the prophets, and abhorred by the Lord; that it was contrary to the divine institution of marriage, and was in all its forms abolished by our Lord.

It is remarked by some of the commentators, that if our Lord had intended to give any liberty of second marriage, he would have specified it, and not have passed it over so obscurely and indistinctly. To this remark it is replied, that "if our Lord had intended to deny the liberty contended for, there was much more resaon for him to do it in specific words; because, if he were silent, his whole determination in the former words would be sure to be understood according to the known usage of those to whom he addressed them, who never dreamed of such restraint after legal divorce[x]." But adultery was unknown to the Jews as a ground of divorce, cognizable in

[w] Chr. Remembr. vol. ii. p. 741. Beza de Divortiis. [x] Chr. Remembr. vol. ii. p. 746.

their courts: it was known to them chiefly as a capital offence, completely exclusive of all consideration of subsequent marriage; and when the condition of divorce was changed, and adultery, and adultery alone, was made by a divine law, and not by human connivance, the ground of separation, there was the more occasion that the effects and extent of the new law should be declared.

The capital punishment of adultery precluded all those doubts of the condition of the guilty party which are inseparable from the doctrine of divorce for adultery. It is not possible, that the alleged dissolution of the bond by adultery should not be liable to perpetual abuse. Offence may be encouraged by the very immunity which is offered, and men may commit adultery in the view of disengaging themselves from a marriage which has ceased to please, and of putting themselves into a condition to enter upon another which promises more satisfaction. The contingent benefit of sin is in itself a temptation to sin. Beza was sensible of the whole force of the objection, which he endeavoured to remove chiefly by challenging the civil magistrate to perform his duty, and to execute the last punishment upon adultery. It has also been proposed to prohibit the marriage of the adulterer with the adulteress: but if adultery is a virtual dissolution of the bond, and the criminal act separates the parties from each other, they are free to marry whom they will, and it is but an arbitrary law which restrains them. It is nevertheless reasonable to suppose, "that our Lord did not intend to give liberty to the guilty party to contract a new connexion with the partner of his crime;

for this also seems to be against the perpetual ground of equity, which cannot be thought to suffer guilty persons to profit by their own crime. If we may not frame any presumption or conjecture concerning what might be our Lord's intention in this respect, yet it appears to be both politic and just that such marriages should be restrained[y]." In the absence of more direct and more efficient measures in retribution of adultery, there can be no doubt of the moral policy of the proposed restriction; and although the right cannot be collected from the supposed dissolution of the bond, which gives equal liberty to both parties, its scriptural authority may be established by the limitation of the clause of exception to the cases it which it is expressed. The husband divorcing his wife for the cause of fornication may marry another woman without imputation of the adultery which attaches to the marriage of any woman divorced under any circumstances, whether for fornication, or any other cause: in respect of her the consequences are not avoided; if there be any dissolution of marriage, it is in favour of the injured husband, who may or may not avail himself of the privilege.

It is admitted, that the doctrine of the dissolution of marriage has a further effect in discouraging the repentance of the offender. "It is this; that if repentance has the privilege to renew a contract not less solemn than that of the marriage tie, even that by which the believer stands bound in covenant to his Lord, it is hard to think that repentance may not

[y] Chr. Remembr. vol. ii. p. 743.

restore the breach made in the nuptial bond. It was far from my intention to deny this privilege, or to shut the door of reconciliation on repentance to the guilty party: and therefore with respect to the conflicting sentiments of the early writers on this particular, some pleading, on the score of charity, for the restoration of the faulty party to forgiveness and affection, and others declaring it to be the part of a weak and even a base mind to put up with the injury, I conceive that these cases must be measured by their circumstances; by the sincerity evinced of their repentance, or the various grounds of palliation which it may be fit for the reasonable and the well-disposed to consider and admit[z]." But are these considerations compatible with the dissolution of the bond of marriage? Are they not founded on the supposition that the bond is not dissolved, and that time and space are allowed for the reunion of the parties, for repentance on the one hand, and reconciliation on the other, after that great example which rejected not an apostate Church, but waited for its return to pardon and peace?

What then, if adultery be intended in the clause of exception, is the extent of the divorce allowed by our Lord? Embarrassed and perplexed as it is under the common interpretation in respect of the dissolution of the bond of marriage, and the application of the clause of exception, it is a law founded on the denunciation of the remedial divorces of the Jews, and in its own nature merely permissive, restricted, unless the law of exception be interpolated, to the

[z] Chr. Remembr. vol. ii. p. 752.

use of the husband proving his wife guilty of adultery, without excuse or temptation from his example, operating in the mere avoidance of consequences which would otherwise ensue, and only by the avoidance of those consequences conveying to the husband the privilege of marrying another woman without imputation of adultery.

But it has been again and again contended, that adultery is not the only cause of divorce. The origin and progress of this opinion will be hereafter detailed: but it is obvious to remark, that when our Lord was correcting the facilities of divorce, which had grown out of the misinterpretation and abuse of the law of Moses, it is not probable that he should have used a general ambiguity of expression, by which the force of his own law would be evaded. He was asked, whether a man might divorce his wife for every cause. In his answer to this question, and in his voluntary interpretation of the ancient law, he denied this licence and latitude of divorce, and made adultery, with one only specified exception, to be the natural, necessary, and unavoidable consequence of divorce. Was this particular exception of so general and unlimited a nature as to admit all equivalent offences, or was it not rather a distinct and specific offence, of which, whatever be its present difficulties, the title was at the time familiar to the Jews, and such that they who heard him could entertain no doubt of its meaning and intent? Whatever was the offence, it was an offence which must be interpreted with reference to the divine institution and rule of marriage, and by the fault of which God had not joined the parties to-

gether, or man was at liberty to put them asunder.

It is nevertheless maintained with considerable plausibility, that Saint Paul[a] admits idolatry to be a ground of separation; and it is inferred, that if idolatry be admitted by the apostle among the grounds of divorce which are restricted by our Lord to fornication, other offences of the same class may be admitted. But before any inference is drawn from this statement let there be a clear understanding both of the words of Saint Paul and the words of our Lord, and let all the difficulties, accumulated upon those which have been already stated in the received doctrine of divorce for adultery, be taken into consideration. This consideration will involve the doctrine, that marriage rightly contracted is, without any exception or reserve, indissoluble: and that there is not under any circumstances a law or licence of divorce authorizing the second marriage of parties properly married, of parties whose marriage is not null and void from the beginning, during the life of each other. The argument is offered to candid and serious consideration, with less aid of authority than might be desired, and therefore with humble diffidence, but not without mature deliberation, or a gradual but full conviction of mind, that the word *fornication* in the clause of exception does not signify, and cannot be proved to signify, adultery; and that, in the necessity of resorting to another interpretation, new harmony and consistency may be introduced into the Christian law of divorce.

[a] 1 Cor. vii. 15.

SECTION III.

Objections to the received interpretation of the clause of exception in the law of divorce, and attempt to recover the original and primitive signification.

THE chief authority for the received interpretation of the clause of exception in the law of divorce delivered by our Lord is, the current of tradition for the last fifteen centuries, in which it has been explained of adultery: and the argument which has been constructed chiefly upon other passages of Scripture, and fastened upon this interpretation, is, that the essential unity of marriage is destroyed by the adulterous intercourse; and that in adultery there is such a violation of the mutual fidelity of marriage, such a renunciation of the proper consort, such a transfer of the person and the affections, as amount to a virtual act of divorce. An attempt has been already made to obviate this argument in favour of divorce upon proof of adultery: and whatever may be the strength of the prescriptive authority of fifteen centuries, it will be opposed by the doctrine of the three preceding centuries, in which the doctrine of divorce for adultery was unknown, and in which the principal term in the clause of exception was interpreted in a very different sense.

The received doctrine is nevertheless so ancient, and has been so universally received, as almost to justify the implicit belief of its truth and scriptural authenticity: and the opposite doctrine, that mar-

riage is permanent and indissoluble in such sense, that there are no circumstances under which a marriage, properly contracted, can be dissolved, is so contrary to the received opinions of commentators, and to the undisputed practice of almost all ages and all countries, as to excite a suspicion of singular presumption, of wanton innovation, and love of paradox, in any man that shall attempt to sustain it. There is a strong prepossession in the public mind, which nothing but stronger arguments can overcome, and which nothing but a firm conviction of the truth should venture to disturb. It is not without deep and serious reflexion that objections have been entertained and suffered to prevail in the mind, against the received interpretation of the clause of exception, which is the principal authority from which the permissive law of divorce has been collected. In assuming the right of divorce upon proof of adultery, it is conceived that five capital objections are overlooked; and that these objections cannot be removed, unless it can be shewn, 1. that the word πορνεια, translated *fornication* in the clause of exception, *does* mean adultery: 2. that the clause of exception ought indeed and of necessity to be understood in the texts in which it is not inserted: 3. that the right and privilege of divorce can be fully collected from the clause of exception: 4. that the doctrine can be reconciled with the tenor of our Lord's discourse: and, 5. that it can be made to harmonize with the doctrine of Saint Paul, in arguing with the Corinthians upon marriage and divorce.

1. The first objection relates to the interpretation

of the word πορνεια, translated *fornication*, and explained in the sense of adultery, i. e. of unlawful communication between two parties, either of whom is married.

The word πορνεια, thus translated, if its classical etymology be respected, signifies, primarily, the *passing over* of property from one to another; and secondarily, exposure to sale: and thus remotely suggesting the notion of personal prostitution, it has been ultimately applied to every kind of lasciviousness and debauchery. To suppose that in the texts in question it denotes lasciviousness generally, would be to introduce a cause of divorce, not less variable and indefinite than the *uncleanness* which had been abused in the law of Moses: and it is by the generality of commentators and Christian writers explained in the more restricted sense of adultery. It is a powerful objection to this interpretation, that not only is another word appropriated to the offence of adultery, but that the word so appropriated, μοιχεια and its derivatives, are specifically distinguished from πορνεια and its derivatives: and that in the texts under review, the legitimate divorce is restricted to πορνεια, and the effect of an illegitimate divorce is described by μοιχᾶται, which implies adultery properly and ordinarily so called.

The word πορνεια is not however of such frequent use in the classical writers as to circumscribe its meaning, or to render it unequivocal and undisputed. There is another etymology, adopted by the ecclesiastical writers, more conformable with the use of the LXX, in which *apostacy* or *alienation* from God constitutes the leading sense implied in the

word πορνεια, and other words of the same family. This is however a point of verbal criticism, of which the details are most properly reserved for the Appendix[a].

Expositors have also varied in the interpretation of the text; and it may be proper to take notice of some of the principal expositions.

Whitby[b] is inclined "to take the word in its proper sense, of fornication committed before marriage, and found after cohabitation: 1. because Christ, speaking of this divorce here and elsewhere, doth never use the word μοιχεια, which signifies adultery, but always πορνεια, which word, both among Jews and Gentiles, doth properly import the sin of unmarried persons, lying one with another, and so being made one body. 1 Cor. vi. 16. It is not therefore likely that Christ receded from the known and common acceptation of the word. 2. The punishment of adultery after marriage was strangling; after sponsalia, stoning; divorce not being mentioned in either case: but simple fornication was not thus punished by the Jews: and 3. by this interpretation the law of marriage is by Christ reduced to its primitive institution; that conjunction with another makes them both one flesh; and so the woman who had thus transgressed was to be dismissed, because she before was one flesh with another, and therefore could not be so with the man to whom she did afterwards marry." But is there any proof that the *crimen præreptæ virginitatis* was called πορνεια? And was not that crime also a capital offence, for

[a] See Appendix, No. I. [b] Com. in Matt. xix. 9.

which, as for adultery, there was no divorce, and very different from the offence of simple fornication, which among the Jews was punished with the scourge? It is also dangerous in principle, to ascribe the effective unity of marriage to the licentious commerce of a man with a woman out of marriage: this is at once the degradation of virtue, and the elevation of vice: and it is equally dangerous in practice, to condemn the offenders to a state of irretrievable shame; to abridge the means of amending their condition; and to exclude them from the possibility of marriage, except by a formal union between the partners in the original offence. The whole proceeds on the inveterate misapprehension of a single text of Scripture; in which the apostle adverts to the unequal marriages of the believing with the unbelieving; and which, by a perversion the most extravagant, is applied to the law of divorce: "that she who has previously united her person with one man, cannot become the wife of another. It is obvious to what an extremity of danger the marriage system among us must be exposed; and what an alarming extent of guilt must be involved in the present operation of it, if this is really a maxim of the Gospel. But indeed, those who have produced the opinion do not insist exclusively upon it, ... and happily for the argument, they affirm, that whenever a marriage is lawfully dissolved, it is also lawful to marry again: for if even a casual union renders the parties unalienable from each other, far stronger is the inference from the fixed condition of marriage. . . .

"There is still another branch of this opinion.

By the custom of the Jews a certain interval took place from the time of the betrothing to the completion of the marriage. The liberty of divorce has therefore been thought to belong only to persons thus mutually pledged, for the dissolution of contracts hitherto imperfect: and fornication has been excepted from the full state of matrimony, and applied to the offences committed against the incipient obligation, and during the continuance of the *sponsalia.*

"It is true, a betrothed woman was by anticipation called a *wife.* In case of misconduct she was also to be divorced, though the parties had not yet come together; and a bill for that purpose was necessary to the voiding of the incomplete contract. But to waive all smaller reasons—it will be sufficient to oppose to this inference the general sense of the transaction, and the wideness of meaning which the term in question had attained. The proposal made to Christ was evidently allusive, in the mind of the speakers, to the general subject of matrimony. It arose from the universal practice that had prevailed in divorces after full marriage, and the Saviour would not have given an answer inapplicable to the purpose. At all events, if so minute a part of the obligation had been exclusively intended, there can be no doubt, I think, that Christ, who was repeating an important part of his own moral law, would have stated it with that precision which became the subject, and which Moses had so particularly observed. He would not have declared himself merely on the preliminary state of marriage, which was so short in duration, and therefore liable to so few accidents,

and left the marriage itself, a point of so much higher importance, to a tacit and indirect inference of an opposite nature. No: his answer is given generally: and whether the sponsalia are involved in it or not, it manifestly comprehends the full condition of marriage[c]."

Selden, who is very inconsistent in the exposition of the word in other passages, introduces a long and unsatisfactory disquisition of its meaning with reference to divorce, by asserting, that in the writings of Philo there is a distinction in the sense of πορνεια and μοιχεια, and that the same distinction may be observed in three texts of Saint Matthew's Gospel. He observes also, that capital punishment, and not divorce, had been consequent upon adultery; and that neither the pharisees nor the disciples considered the doctrine of our Lord to be new or unheard of, although it met with but little countenance or support, except in the school of Sammai. With a view of ascertaining more exactly the meaning of the clause of exception, he proposes three different questions for discussion; 1. In what *language* the words were originally delivered and recorded; which he determines in favour of the Syriac language; affirming, that the Rabbinical dialect was as common to the theological disputations of the Jews, as is the Latin to those of modern universities. 2. The second enquiry relates to the *words* originally used; and if our Lord spoke in the Syriac language, the clause of exception would be, Except for the cause of fornication: and if, as is most probable, the conference was

[c] Nupt. Sacræ, p. 27—31.

conducted in the dialect of the schools, the question of the pharisees would be, Is it lawful to put away a wife for every cause? This was the popular opinion of the school of Hillel, who thus interpreted the words of the permissive law of Moses; saying, that it was for uncleanness, or for any other cause. A disciple of the more rigid school of Sammai in opposing this opinion of the Hillelians, would answer in the language of the schools, If a man divorces his wife, except for the cause of uncleanness, he causes her to commit adultery. This was the doctrine of the Sammæans, who restricted the licence of divorce to uncleanness alone. 3 In respect of the meaning of the words used, it is the opinion of Selden, that the Jews understood the word, translated πορνεια, in a larger and in a stricter sense. In the stricter sense they applied it to any intercourse of the sexes out of marriage, and to any incestuous marriage, corresponding with their views of incest, and their exposition of the harlot, alien, or πορνη, whom the priest was forbidden to marry; of a woman not of the house of Israel; of a woman incestuously married, or with whom a profane person had incestuously lain. (This is the exposition on which it is now proposed to insist, but) it is added by Selden, that they also applied it to adultery in the ordinary sense, and that even in the Old Testament the word may be used by a synecdoche of a particular name for a general, or of a general for a particular name. Selden allows that the word is used in a more relaxed sense to signify idolatry and the various abominations of idolatry, as in Acts xv and perhaps also in Wisdom xiv. 12; and by Philo, and in 1 Cor. v. 1, where the or-

dinary interpretation does not adequately describe the enormity of the offence. The Hebrew and Greek words are both equivocal, distinguished indeed from μοιχεια, when that word is used, and at other times susceptible of the widest sense and exposition, and descriptive of an alien state, of a life opposed to the law, and estranged from the covenant of God. In the Syriac language they might mean any kind of uncleanness, which he supposes to be implied whenever the harlots are mentioned in conjunction with the publicans, (whose offence however was chiefly legal uncleanness, and estrangement from the commonwealth of Israel:) and if the words were delivered in the rabbinical and scholastic language of the Hillelians they would denote unrestricted turpitude, and include every thing which ought to be concealed [d].

In the prosecution of his argument, Selden adverts to the opinions of Origen [e], who assumes the objections of a Jew, understanding our Lord's exceptive clause to be of the same extent with the law of Moses. Origen, according to Selden, would not have anticipated this exception but in the conviction of the large sense of πορνεια entertained among the Hellenists; and it is remarkable, that he supposes

[d] Ux. Ebr. l. iii. c. 23. compare c. 27. where it is observed, "fornicationem tripliciter intelligi: proprie, quæ carnis est, ut stuprum seu adulterium ipsum: communiter, quæ est infidelitatis, ut idololatrarum et apostatarum; et commissive, atque ita actus cujuscunque peccati est fornicatio." No man who considers all the difficulties of the question will refuse to acquiesce in the modest conclusion: "Nihil hic definimus: consideranda tamen proponimus."

[e] Comm. in Matt. tom. xii. s. 23, 24.

the uncleanness of the Mosaic law to be equivalent to any offence[f], and suggests a doubt whether the principal offence of adultery or fornication may not be meant to designate other crimes confessedly of a different nature, but of equal magnitude. Thus πορνεια among the Jews would be equivalent to *mali mores* among the Romans in a suit of divorce. But it is not probable that our Lord would object to the rule of Moses as an accommodation to the hardness of

[f] Αλλα γαρ ταχα Μωσης παν ἁμαρτημα ασχημον ειπε πραγμα. "The question is, What is meant by the words, *if he find any uncleanness, turpitude, or nakedness in her?* The Jews are divided in their opinion about it: the Christians are no less so: some confining it to adultery and other enormous crimes, such as idolatry, apostacy, and the like, which the Scriptures often call fornication, and is the word made use of by our Saviour for adultery. For our part we cannot believe any of these cases to be meant by the words of Moses; because, as these were all capital crimes, it would have been ridiculous to have ordained a divorce against those who were to be put to death. We think rather therefore that it meant some involuntary uncleanness, whether natural or contracted, which rendered her loathsome in his eyes, or unfit for the nuptial intercourse; which Christ therefore discommends in the Gospel, not only because it was become too frequent, and permitted upon every trivial occasion, but also to assure the people that the marriage knot was not to be dissolved upon any pretence except that of infidelity. The words may also be rendered, *for any turpitude, or immodesty of words, discourse, or even behaviour.* So that this indulgence might have been designed to deter the wanton sort of wives from such immodest speeches or behaviour as might be apt to disgust a sober husband, and to inspire them with such chaste deportment as could alone preserve a true conjugal affection. According to this sense also our Saviour's reflection will be very just, that it was their indocible temper that extorted such an indulgence from Moses, which was manifestly contrary to the original design and institution of marriage." Anc. Univ. Hist. vol. iii. p. 147.

heart prevailing among the Jews, and himself immediately authorize the same licence. There is a difference also in the language of the two laws: by the law of Moses, as Origen answers to the Jew, the adulteress was to be stoned: her offence was not therefore the uncleanness, or ασχημον πραγμα, for which Moses permitted divorce, which our Lord restricted to fornication, or πορνεια, and these are all representatives of different words in the original: and it is gratuitous to suppose that our Lord used the word not ordinarily translated by πορνεια, and bearing a different signification, especially when there is no reason to believe that πορνεια was an unintelligible or indefinite word among the Jews, with whom our Lord was conferring.

Grotius[g] also, in a prolix comment on Matt. v. 32, 33. has adopted the loose suggestions of Origen, and argued, that under the word πορνεια other offences and causes of divorce may be included. His comment is adapted to accommodate the precept of Christ to the laws of the later emperors, rather than to bring back the laws of the empire to the precepts of Christ. The whole tendency of our Lord's discourse in Matt. xix. and in Mark x. shews that divorce was unlawful and marriage indissoluble, either in all cases, or with one particular exception; and although the exception was so strict as to excite the scruples of the disciples, it was certainly not relaxed in accommodation to those scruples.

Lightfoot[h] interprets *uncleanness*, in the Mosaic law of divorce, of adultery, and argues, that the

[g] Poli Synops. in loc. [h] Hor. Hebr. in Matt. v. 32. xix. 8.

capital punishment previously pronounced upon the woman was abated by that law: he has therefore no difficulty in asserting, that the law of Christ was a restoration of the true spirit of the old law, which was properly intended to restrict the permissive law of divorce to the single case of adultery. Tertullian also, in a perplexed argument with Marcion[i], supposes the *uncleanness* in the law of Moses to be equivalent to *fornication* in the law of Christ: but he puts upon both a peculiar construction, which seems to imply a fault rather precluding than dissolving the marriage. There will be other occasions for bringing the details of this argument under discussion; it is sufficient for the present to observe generally, that "in the Jewish law fornication and adultery had been regularly distinguished from each other, both in name and in the mode of punishment; and it was to Jews, who had long understood and acted upon these distinctions, that the Saviour now addressed himself[k]."

Let the reader weigh these different opinions, and determine for himself whether these differences could have subsisted, if in the clause of exception the word μοιχεια had been substituted for πορνεια, or if πορνεια had ever been in common use to signify adultery; whether, if our Lord had intended to make adultery the principle of exception, he would have used a word at least of ambiguous signification, in preference to one of which the sense is indisputable; and whether it is altogether improbable, that the word had at the time a peculiar and definite meaning,

[i] Lib. iv. s. 34. [k] Nupt. Sacr. p. 26.

which has been gradually lost and disused, and for which the classical sense and meaning of πορνεια, improperly restricted to adultery, has been substituted. Selden, in his discussion of the text, notices the opinion of the Jewish commentators, that the unlawful and incestuous marriages of Jewish men with alien women were acts of πορνεια, or fornication. The learned Dodwell[1] explains the word, in the use of Justin Martyr, of the *piaculum* contracted by an unholy or unequal marriage; and, without ascribing this sense to the LXX. or the writers of the New Testament, he infers the same meaning from other contiguous expressions, and pronounces the marriage of a believer with an unbeliever, or a marriage out of the *peculium*, to be an act of apostacy or alienation, which the believer was not at liberty to make. Continental writers have produced scriptural examples of this sense of the word, which is not now discountenanced, but embraced, by Schleusner. The grounds of this interpretation are examined at length in the Appendix, and it may be permitted here to recapitulate the heads of that investigation: viz. that μοιχεια means adultery, and is distinguished from πορνεια, and neither included under πορνεια, nor synonymous with it; that the ecclesiastical etymology of πορνεια implies the notion of *apostacy*, or idolatry, which is recognized by the Lexicons, and confirmed by the constant usage of the Septuagint and other Hellenistic writers, who apply the word in this predo-

[1] Concerning Marriages in different Communions; in a Sermon at Chester, (by Charles Leslie:) prosecuted by Henry Dodwell, s. 14, 43.

minating sense to the peculiar desecration of the heathen priesthood, and to the marriage with the Gentiles, in which the Jew apostatized from his family and his God. There is no clear and unexceptionable example of the use of the word in the Old or the New Testament to denote adultery; it is not ordinarily to be interpreted even of simple fornication; but it is in continual use to signify apostacy and the several acts of apostacy, and there are indisputable examples of its appropriation to marriage out of the *peculium*, which was a principal act of apostacy and alienation from God.

It is certain, that these marriages were proscribed under the Old Testament; that the Creator, in the language of Tertullian, every where proscribed or annulled marriage with foreign tribes[m]; and that the marriages contracted with heathen women during the captivity at Babylon, where the people might suppose themselves in a state of legal pollution and separation from the *peculium*, were afterwards dissolved; and that the foreign wives were put away under the authority of Ezra and Nehemiah, the great reformers of the Jewish Church. The author also of the book of Tobit, who is supposed to have lived near to the apostolic age, represents Tobit as giving advice to his son to beware of all πορνεια, fornication, as it is called, and chiefly to take a wife of the seed of his fathers, and not to take to wife a strange woman, who was not of his father's tribe; and when Tobias had obtained his bride, he makes confession; I take not this my sister for lust, for

[m] Adv. Marcion, l. v. c. 7.

πορνεια, but uprightly[n]. It is of yet more importance to observe, that this exposition of the word has the authority of apostolical use, and that marriages of this description, the marriages of believers with unbelievers, are condemned in the pointed question of the apostle[o]; Shall I take the members of Christ, and make them the members of an alien woman, πορνης, by contracting marriage with her? It is reasonable also to believe, that the opinion which prevailed among the primitive converts, as well of the nullity as of the offence of these marriages, suggested the case which was submitted to Saint Paul, and resolved by him, and to which he adverts under the singular expression, δια πορνειας[p], meaning, as is contended on the most ancient authorities, and in consistency with the apostle's language in the preceding chapter, the marriages contracted among the unbelieving before their conversion to the faith. The frequency of these marriages was also the occasion of earnest remonstrance in the second Epistle[q]. The apostle's doctrine will be hereafter examined at length: the present argument relates only to the use of the word, a word which would naturally be disused and misunderstood among the heathen converts, but of which it is important to observe, that both the word and the doctrine expressed by the word were known to the Hellenistic Jews, to the LXX, to the apocryphal writers, to the writers of the New Testament, to Philo, (and it may be to Josephus,) and to the earliest writers of the Christian

[n] Tobit iv. 12. viii. 7. See Dodwell, s. 18. [o] 1 Cor. vi. 16.
[p] 1 Cor. vii. 2. [q] 2 Cor. vi. 14—18.

Church. If their united authority, in the absence of all example for explaining the word in the clause of exception of *adultery*, be admitted, that clause must be interpreted of an impediment precluding marriage, not of an offence dissolving marriage. The doctrine of our Lord will thus be conclusive of the indissolubility of marriage; and divorce will be followed by adultery, or a guilty temptation to adultery, in all cases, with the only exception of that in which apostacy or incest in the Jewish sense has annulled the original contract, and rendered the parties free to enter into a new connexion without imputation of adultery, which implies the validity of the previous marriage.

2. The second objection to the doctrine of divorce in cases of adultery is founded on the omission of the clause of exception in the Gospels of Saint Mark and Saint Luke.

It is generally maintained, that it is necessary to understand the clause of exception where it is not expressed. There would be the more reason for this supposition, if the clause were in itself clear and unambiguous; if the proposition containing it were the more general proposition; if the propositions omitting and containing it had been precisely the same, illustrated by the same cases, and necessarily requiring the same exposition; if, instead of being restricted to two varieties of one specific case, it had been applied to other cases; and if it had been omitted in one Gospel only, as it has been asserted in one Gospel only. But, while it is found in Saint Matthew's Gospel, it is omitted in the Gospels of Saint Mark and Saint Luke: and thus the

preponderance[r] of authority is against the insertion: for although there are one Gospel, and one case, and two sentences, in which it is expressed; there are six sentences, three cases, and two Gospels, in which it is not expressed.

Doubts have been already thrown on the necessity of understanding the clause, if it be explained in the sense of adultery: it remains to shew, that there is no occasion for its insertion if it be interpreted of marriage with aliens.

It is of the first importance to notice the different design and purpose with which these Gospels were written. Saint Matthew wrote for the native Jews: Saint Mark wrote for the foreign Jews; or, as others suppose, he and Saint Luke both wrote for the heathen converts. It is therefore reasonable to suppose that it especially concerned the native Jews, in whose Gospel it was inserted; and was of less importance to the foreign Jews and Gentile converts, in whose Gospel it was omitted. It will probably be objected by the advocates of the received interpretation, that under this distinction Christ must be understood to deliver a new law to the Jews; but that in the sermon on the mount he argues not for the partial use of the Jews, but for the general instruction of all mankind. The exception is nevertheless contained in an express comment on the

[r] This and the preceding objections are noticed *con amore* by Gibbon, c. 44. n. 131. "In pure Greek πορνια is not a common word, nor can the proper meaning, *fornication*, be strictly applied to matrimonial sin. . . . There are two (Mark x. 11. Luke xvi. 18.) to one, (Matt. xix. 9.) that such ground of divorce was not excepted by Jesus."

Jewish law, and in a direct and immediate conference with the Pharisees; and it is only in the sense of adultery that it can be called a new law to the Jews. Interpreted of forbidden marriages with aliens, it proceeded on principles which were recognized in the law and the history of the Jews, and of which the exact observance might be expected of the Pharisees: and our Lord may be supposed to have alluded to the prevailing facility of the native Jews, in dissolving lawful and contracting unlawful marriages, when he permitted the dissolution of the one, and affirmed the absolute indissolubility of the other, with an address which could not be offensive to the foreign Jews, in whose circumstances such marriages would be more venial. Thus the clause is primarily appropriated to the discipline of the Jews, in whose Gospel it is inserted; and thus authoritatively recorded, it conveys general instruction, interesting to all ages and all nations, on the indissolubility of marriage; at the same time that in the allowance of divorce or nullity of marriage in a specific instance, it insinuates a caution in respect of marriage with aliens, founded in the Jewish law, and so far peculiar, but recognized also in the laws of Athens and of Rome, enforced in the Canons of the Christian Church, and not practically violated without accumulated danger and offence.

The different purposes of the writers may therefore have led to the designed omission, and the designed insertion, of the clause in the different Gospels. The proposition without the clause is universal; it abolishes, in all cases of valid marriage, the licence of divorce, with a perspicuity and a force

which leaves no doubt on the reader's mind: the proposition with the clause is of limited application; it admits an exception, but that exception is involved in doubts and difficulties, which it is hardly possible to remove.

But it will be contended, that the occasion upon which two of the texts, one inserting the other excluding the clause, were delivered, was the same; and hence it is inferred, that they require the same expository exception. It is incumbent upon every man who discovers, or imagines that he discovers, an opposition or contradiction in the Scriptures, to pause, and consider the means by which they may be reconciled: and the opposition which is perceived in the omission and insertion of the clause of exception, appears to admit of an easy and natural adjustment. In the Gospel of Saint Matthew there is no contradiction; the doctrine is delivered in two texts, both containing the clause of exception: and although the doctrine is illustrated by two different cases, there is no opposition or contrariety in the cases.

Matt. v. 32. I say unto you, that whosoever putteth away his wife, except for the cause of fornication, causeth her to commit adultery; and whosoever marrieth her that is put away committeth adultery.

Matt. xix. 9. Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; and whosoever marrieth her that is put away committeth adultery.

The effects of an unjust divorce, in respect of the divorcing husband, are differently put, but the cases

do not conflict, and they need not to be reconciled. If he puts away his wife for any other cause than πορνεια, he causes her to commit adultery, if she marries; and he himself commits adultery if he marries: because, notwithstanding the pretended divorce, the original marriage remains in force. If he puts her away for πορνεια; if the original marriage be doubtful; if it be no more than πορνεια; the consequence of unlawful divorce is removed: adultery, which implies the validity of the marriage, is impossible; not because the matrimonial obligation is dissolved, but because it never subsisted. The permission, and even in this case it is no more than permission, of divorce is properly restricted to the husband, to the Jewish husband of an alien woman, by the analogy of history in the divorce of the foreign wives; and by the use of the terms, and especially with respect to the issue of such marriages, which would be children πορνειας, inheriting the condition of their alien mother: the children of a Jewish mother would not be aliens; and her alien husband, not being amenable to the Jewish law, could not be guilty of πορνεια in respect of that law, and could not be separated by its rules or prohibitions. If the clause of exception were not restricted to the husband upon its own grounds, it is remarkable that the following sentence, which respects a divorced woman, contains not the remotest reference to the preceding law of the man. In respect of her, the words of Saint Matthew in both texts, as well as of Saint Luke in the corresponding text, are the most indefinite that can be conceived: he does not call her the divorced woman, or that man's divorced wife, as

might have been expected, if the clause were to be understood; but with Saint Luke, απολελυμενην[s], in the sense of any divorced woman, any woman divorced under any circumstances. The rule without the clause is most comprehensive: If any man divorces his wife, he causes her to commit adultery, and he commits adultery if he marries; and if a man marries a divorced woman, he commits adultery, a consequence which is avoided only in a case of πορνεια. The doctrine may be illustrated from the practice of the English courts: if a man marries a woman divorced from her husband on the ground of incest, there is no adultery, because the original marriage was null: if he marries a woman separated from her husband by sentence of divorce, *a mensâ*, there is adultery, because the original marriage remains. The Jewish law forbade the high priest to marry an alien woman, (πορνην,) and a divorced woman, (απολελυμενην,) and if a law of marriage were to be collected from our Lord's law of divorce, his disciples would be restricted from marrying any divorced woman, because her previous marriage would annull any subsequent marriage; and any alien woman, because such marriages would be dissoluble. The essential permanence of marriage prohibits either party from entering into any new marriage during the life of the other, without imputing adultery to the party divorcing and the party divorced: the alien

[s] "Not 'her that is divorced' or dismissed, but *any one* that is divorced. This distinction may appear frivolous, but the principle of the distinction is important." Middleton on the Greek Article, p. 188.

only may be separated, rather in censure of the unlawfulness of the marriage, than in commendation of the lawfulness of the divorce, which is permitted only in a single case, by an inference and an exception from the general law.

The words of Saint Luke are also thought to be the same with those of Saint Matthew: Whosoever putteth away his wife, and marrieth another, committeth adultery; and whosoever marrieth her that is put away from *her* husband (απ' ανδρος,) committeth adultery[t]. The clause of exception is omitted by Saint Luke, and inserted by Saint Matthew; and Saint Luke recites the case not only of a woman divorced, but of a woman *divorced from a husband;* and the first writer who copies his words adds, *from another husband.* It may be a minute criticism, but the omission of the clause of exception, joined with the addition of other words, can hardly be unmeaning or undesigned, and gives countenance to the opinion that Saint Luke founds the charge of adultery, consequent upon unlawful divorce, on a valid obligation of marriage between a lawful husband and a lawful wife, which is excluded from the exception recorded by Saint Matthew. It is not easy to discover the connexion and order of the words in Saint Luke: if, as is supposed by some commentators, the rule is intended as an example of the superior purity of the Gospel compared with the law, the absolute prohibition of divorce will form the strongest contrast with the licence of divorce under

[t] Luke xvi. 18. ὁς γαμει απολελυμενην αφ' ἑτερου ανδρος μοιχαται. Just. Mart. Apol. i. s. 15.

the law: or if, as was suggested by Tertullian, the rule is to be connected with the mention of John, and the tacit reference to his rebuke of the adulterous intercourse of Herod with Herodias, it was sufficient to reflect on the unlawful possession of a divorced woman, and there was no occasion for the clause of exception. The general resemblance of the words reported by the two evangelists, will not alone prove that they were delivered upon the same occasion. In the points already noticed, the words of Saint Luke differ from the conference with the pharisees; and the case put in the first clause is perfectly distinct from that reported in the sermon on the mount. It is not therefore necessary to understand the clause of exception in exposition of Saint Luke, or in reconciliation of the two evangelists. The one may have been justified in admitting what the other was equally justified in excluding.

But it is confessedly the same transaction which is variously reported by Saint Matthew and Saint Mark. The identity of the occasion is unquestionable, but there are many differences in the two narratives. In both histories the conference begins with the same, or nearly the same, question, on the part of the pharisees; but in the one that question is answered by a reference to the primitive institution of marriage; in the other by a reference to the law of divorce, and the reference to Genesis forms a subsequent part of the conversation. Saint Matthew makes the pharisees to ask, *why* Moses permitted divorce, which our Lord resolves: Saint Mark represents our Lord to ask, *what* Moses commanded, and the pharisees give the answer. In Saint Mat-

thew our Lord delivers his rule with the clause to the pharisees, and they make no objection: in Saint Mark he delivers the law without the clause to the disciples, and they, according to Saint Matthew, make an objection. These differences, and other variations of lighter import, which have been already noticed, may be easily reconciled on the supposition that the two evangelists relate each parts of a larger conversation, which may be arranged in the following harmony, compiled from the two evangelists, in which the passages from Saint Mark are distinguished by the Italic character:

" He departed from Galilee, and came into the coasts of Judea beyond Jordan, and great multitudes followed him, and he healed them there, *and, as he was wont, he taught them again.* The Pharisees also came unto him, tempting him, and saying unto him, Is it lawful for a man to put away his wife for every cause? *And he answered and said unto them, What did Moses command you? And they said, Moses suffered to write a bill of divorce, and to put her away.* And he answered and said unto them, Have ye not read, that he which made them at the beginning, made them male and female, and said, For this cause shall a man leave father and mother, and shall cleave to his wife, and they twain shall be one flesh? What therefore God hath joined together, let not man put asunder. They say unto him, Why did Moses then command to give a writing of divorcement, and to put her away? He saith unto them, Moses, because of the hardness of your heart, *wrote you this precept,* (AND) suffered you to put away your wives: but from the

beginning it was not so. *But from the beginning of the creation God made them male and female. For this cause shall a man leave his father and mother, and cleave unto his wife, and they twain shall be one flesh: so they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.* And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; and whosoever marrieth her that is put away committeth adultery. *And in the house the disciples asked him again of the same matter: and he saith unto them, Whosoever shall put away his wife and marrieth another committeth adultery against her; and if a woman shall put away her husband and marry another she committeth adultery.* His disciples say unto him, If the case of a man with his wife be so, it is not good to marry. But he said, All men cannot receive this saying, save they to whom it is given: for there are some eunuchs which were so born from their mother's womb; and there are some eunuchs which were made eunuchs of men; and there are eunuchs which have made themselves eunuchs for the kingdom of heaven's sake. He that is able to receive it, let him receive it."

On this harmony of the two Gospels, as far as the clause of exception is concerned, it is important to observe, not only that our Lord insists in opposing the original doctrine of the indissolubility of marriage to the divorce permitted under the Mosaic law, and in giving to the original doctrine the sanction of his word, but that the pharisees made no

objection to the doctrine, when it was coupled with the clause of exception, which they would hardly have failed to make if the clause had related to the novel cause of adultery. On the other hand, the attention of the disciples was excited by the conference, and when in the house they asked the Lord of the same matter, he repeated his doctrine, omitting the clause of exception, and applying his new law in the most indefinite and unrestricted terms to the several cases of the man and the woman, not allowing any man to divorce his wife, nor any woman to divorce her husband, and to marry again, without imputation of adultery. In Saint Mark's report he makes no reference to the *passive* case of the woman divorced, but dwells exclusively on the *act* of the man in divorcing his wife, and of the woman in divorcing her husband, and charges both with adultery if they marry again. The disciples immediately objected to this general statement: If the case, or, as Whitby explains it, if the original state, of a man with his wife be thus, it is not good to marry. Did they then understand the clause of exception, or were they more prone to make objections than the pharisees? Did not their objection imply, that there was no ground of divorce, that the state of marriage was under all circumstances indissoluble? How then did our Lord meet the objection of his disciples? Did he palliate the rigour of his doctrine by referring to the clause of exception? No; but he sustained it in its extreme and utmost latitude; he did not concede the divorce for adultery, which as men they might have desired, but he maintained his doctrine in all its severe simplicity, confessedly

unaccommodated to the temper of men, saying, All men cannot receive this saying, save they to whom it is given:—he that is able to receive it, let him receive it.

It is not therefore unreasonable to conclude, that the doctrine was delivered both with and without the clause of exception, and that the reports in which it is excluded are equally faithful and authentic with those in which it is inserted. There are also the marks of a reasonable design in the reports of both evangelists. As apostles of the Jews they were required to insert what was immediately addressed to the Jews, and what might be intended to convey an indirect permission (it is not an obligatory precept) to other men: as evangelists of the Gentiles, they were justified in omitting what was not addressed to the Gentiles; and in enforcing, without any exception, the strict prohibition of divorce. Saint Matthew, writing for the native Jews, reported the doctrine which satisfied the pharisees: and they for whom his Gospel was intended, would not be surprised at the exception from the general indissolubility of marriage, of such matrimonial alliances as were contracted with aliens. Saint Mark, who wrote for the foreign Jews, whose notions of matrimonial purity were less severe, and among whom the forbidden marriage with aliens was, from local circumstances and association, more frequent and more venial: and Saint Luke, who wrote for the heathens, who would be offended if marriages with them and with their women were called πορνεια, even in the Hellenistic sense of alienation, and held to be voidable, omitted the clause, and were content to

affirm, that lawful marriage was without any exception indissoluble. The same address would not have been required if the word had signified adultery, which the heathens admitted to be a just cause of divorce.

3. The third objection to the doctrine of divorce in cases of adultery is, that it cannot be fully and fairly deduced even from the clause of exception.

In amending the law and practice which formerly prevailed, the language of our Lord is very definite and precise. In referring to the old law, he says, It has been said: in proposing the new law, he introduces it with authority; I say unto you. It is thus that he speaks of the law of divorce; It hath been said[u], Whosoever shall put away his wife, let him give her a writing of divorcement: but I say unto you, That whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whosoever shall marry her that is divorced committeth adultery. This is language which leaves no doubt of the repeal of the old and the establishment of the new law. The clause of exception, comprehensive as it is supposed to be, is delivered in a very different form: it has no contrast in the old practice, and pretends to no authority beyond a permissive inference. Divorce for fornication is not sanctioned as the adulterous look is

[u] Matt. v. 31, 32. Whitby remarks, "Here Christ saith not as before, It hath been said to them of old; but only, It hath been said: to note, that this was not a precept given by Moses to divorce their wives, as the pharisees suggested, ch. xix. 7, but only a permission in some cases so to do, as our Lord there answers."

forbidden: nor is it capable of the forcible application with which the fathers afterwards insisted on the divorce for adultery: as Jerome saith, that, if a woman hath committed adultery, she ought not to be kept by her husband; he being pronounced a fool and a wicked person who retains an adulteress, as the LXX. read Proverbs xviii. 27. as the Greek fathers say, it is honourable to cast her out; and as it is laid down in the Apostolical Constitutions, that he who retains an adulterous wife is a transgressor of the law of nature[x]. Very different is the language of our Saviour in coupling divorce in all other cases with adultery as its necessary consequence, and permitting divorce in a particular case, by vitiating or denying the consequences which would otherwise result from the divorce. He who putteth away his wife for fornication and marrieth another doth not commit adultery, and so far is negatively righteous; he neither sins himself nor leads another into sin. This is the full extent of the permission of which he avails himself: he obeys no precept, he performs no duty; he merely does not transgress the law. The objection is as old as the third century, that our Lord did not say, Let no man divorce his wife, except for the cause of fornication; but, Whosoever divorces his wife, except for fornication, causes her to commit adultery[y].

It should be remembered, that this exception, in its received and ordinary interpretation, amounts to no less than the introduction and establishment of a

[x] Whitby in Matt. xix. 9. [y] Origen. Com. in Matt. tom. xiv. s. 24.

new cause and occasion of divorce, which had not previously been allowed among the Jews; to the extension, if the clause of exception be interpolated, of this right to the woman, who had no such privilege under the law of Moses; and to the repeal of various capital punishments, which had been sanctioned by that law, and which were either in force, or of which the operation was only suspended, as appears from the case of the woman taken in adultery: and it may be judged, whether it is consistent with the usual practice of our Saviour to make so comprehensive a revision of the ancient law in the mere form of a clause of exception, an exception which did not meet the question proposed, nor correspond with the general topic of his discourse. The strong judgment which he pronounced in the sermon on the mount, on even the thought of adultery, will not allow the supposition that he mentioned it incidentally and in a parenthesis as an offence for which a man might use his own discretion in divorcing his wife.

The cause of fornication appears to be a forensic term; but whether it relates to a suit instituted, or the sentence of a law delivered, it has no corresponding term in the ancient law, if it be interpreted of adultery, for which no suit of divorce could be maintained, and which under that name was not even forbidden. Divorce on the ground of adultery was, as in the case of Joseph, entirely a private transaction, unknown to the public tribunals; and if it had been the intention of our Lord to substitute divorce for the capital punishment of adultery, the case of the woman taken in adultery would have

afforded a just and convenient occasion for the delivery of the doctrine. If the cause of fornication be interpreted of marriage with aliens, it has a corresponding term in those texts in which such marriages were forbidden, and their issue declared illegitimate, and in those histories which relate to the dissolution of such marriages. Dodwell[z], without adverting to the clause of exception, has not scrupled to interpret the reproach, or ονειδος, which the sons of Israel attached to the marriage of their sister with the uncircumcised, of the charge of an adversary in a legal court, comparing it with the *calumnia* of the Roman law, and observing that the *piaculum* contracted by those unholy marriages is called πορνεια. The case of these marriages, familiar to the Jews of the age, and in their estimation null and invalid, might be properly insinuated into the doctrine of divorce, and a clause of exception might supply the place of a more clear and explicit law, at the same time that the general doctrine would meet the question of the pharisees, and in respect of the woman would make no addition to the ancient law. The pharisees asked, if divorce was lawful for every cause, and our Lord answered their question without any reserve in the negative, by making adultery, or a temptation to adultery, the common consequence of divorce. He assumed the validity of the previous marriages, advising them in the parenthesis, or clause of exception, that he did not speak of other marriages, of cases of πορνεια, of marriages, or of women subject to the λογῳ πορνειας, or of women who were

[z] Of Marriages in different Communions, p. 38—52.

wives only επι πορνεια. In such cases he left the parties to use their own discretion; it was not necessary for him to give to such marriages a validity which they did not possess, and from the want of which adultery could not follow their dissolution. They were marriages in which God had not joined the parties together, and in which man was therefore free to put them asunder.

4. A fourth objection to the doctrine of divorce on the ground of adultery is, that it is not authorized by the context.

It has been already shewn, that the text of Saint Luke is too isolated and detached to derive any certain advantage of exposition from the context, and that without the interpolation of the clause of exception, and in the plain and obvious meaning of the words, adultery is represented without any restriction to follow divorce from a lawful wife.

In the sermon on the mount the new law is strongly contrasted with the old: the latter is abolished, the former is affirmed. But the old law had no reference to adultery, which it is not therefore necessary to understand in the new, to complete the points of comparison. The great offence under the old law was, that it admitted the divorce of a wife. The Lord is said to have hated divorce, or putting away, for this reason, that he had been witness between a man and the wife of his youth, who, notwithstanding his treachery towards her, was his companion, and the wife of his covenant; and it was the aggravation of their offence, that the Jews added πορνεια to divorce; that they not only abandoned their proper wives, but entered into new

alliances with foreign women; and that Judah married the daughter of a strange god[a]. The Christian law is therefore sufficiently opposed to the Jewish law in superseding the divorce of a lawful wife, by ascribing such perpetuity to the conjugal relation that the consorts cannot separate from each other, and be united with other consorts, without committing adultery against the party that is abandoned, and the union with whom is such as cannot be dissolved. The main design of the new law was not to make provision for cases of adultery, but to restrict or suppress the practice of divorce. The only exception relates to the unlawful wife: the antithesis, if there is an antithesis, is not between marriage and adultery but between the lawful and the unlawful, the native and the alien wife, between the real wife that is παρεκτος λογου πορνειας, and the wife that is not παρεκτος λογου πορνειας. Adultery is the unavoidable effect of marriage after the divorce of the former, by reason of the continuity of the obligation: but adultery, being founded on the validity of the marriage, would not result from any new marriage following the divorce of the latter.

The object of the pharisees in the question which they proposed to our Lord, tempting him, was, according to Origen, to embarrass him in a dilemma, and to accuse him if he permitted divorce for every cause, of dissolving marriage on ordinary pretences; and if he prohibited divorce altogether, of suffering a man to dwell with his wife after her offence. He avoided this dilemma, first, by forbidding divorce for

[a] Malachi ii. 11, 14.

every cause; and secondly, by answering the objections from the bill of divorce: he perceived that every cause does not justify divorce, and that it becomes the man to dwell with his wife as with the weaker vessel; rendering her honour, and bearing the burthen of her offences; and he insisted on the words of Genesis, as an irrefragable argument with men who boasted in the writings of Moses; and he confirmed the force of the argument against divorce for every cause, with the words, What God hath joined together let no man put asunder[b].

The grand purpose of our Lord in all the texts, and especially in the conference with the pharisees, is to supersede the law and licence of divorce, and to restore the original doctrine of the indissolubility of marriage, by affirming that the nature of that relation is so obligatory, that divorce is, under any circumstances, a temptation to adultery, and that it cannot be followed by marriage, without the actual commission of adultery. Divorce under any limitation is confessedly opposed to marriage, and the opposition is not relieved by the tenor of our Lord's discourse. The question of the pharisees, Is it lawful to put away a wife for every cause? was a question requiring a full and direct answer: and no answer could be more full and direct than the reference to the primitive institution of marriage, which required that the man should cleave unto his wife, and ordained that the two should be one, incorporated in indissoluble unity. This incorporation and individuality of the sexes in marriage is asserted

[b] Origen. Com. in Matt. tom. xii. s. 16.

by our Lord, on the authority of the sacred text, and confirmed by his own immediate inference; Wherefore they are no more two but one, combined in unity which admits not of division: and it is further sustained, on the supposition that the conjugal union is sanctified and confirmed by the Deity: What God hath joined together let not man put asunder. There was a solidity in these principles, to which even the pharisees could not object; and they therefore brought forward the permissive law of Moses; to which our Lord was so far from giving any countenance, that he imputed the origination of that law to a concession on the part of Moses to the hardness of the people's hearts; and again insisted on the divine institution and confirmation of marriage; asserting, according to Saint Matthew, that from the beginning it was not so, nor was there any divorce; and, according to Saint Mark, reciting the words of Genesis, and inferring from these words the incompetence of man to separate what God had joined together; and concluding his whole argument by the publication of a new rule on his own authority: And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; and whoso marrieth her that is put away committeth adultery. It is remarkable that our Lord should make the only unequivocal mention of adultery, in representing not the justifying cause, but the offensive consequence, of divorce; and that the clause of exception, in its ordinary interpretation, not only introduces a new ground and rule of divorce, but is opposed to the whole tenor of our Lord's discourse, in pressing the

indissolubility of marriage, on its primitive institution; on its essential unity; on its divine confirmation, which took from man the power of divorce; on the partial concession of the Mosaic law, opposed to what was in the beginning; and on the consequence of adultery, which the validity of the original marriage attached to divorce. Is the whole force of this consolidated reasoning to be dissolved by a clause of exception, interpreted, without any authority, of adultery; and made, by an inference from that unauthorized interpretation, to convey a sanction and licence of divorce. But it will be said, that the disciples objected to this doctrine with the exception, according to Saint Matthew: If the case of a man with his wife be so, it is good not to marry. Were they then the disciples of the loose school of Hillel, and so passionately impregnated with Jewish prejudices in favour of divorce for every cause, that the concession of divorce for adultery did not satisfy them? But, according to Saint Mark, the exception was omitted in the private conference, in which the disciples made the objection; and our Lord, so far from removing their objection by adverting to the permissive exception, maintained his doctrine in its utmost rigour: All men cannot receive it. . . . He that is able to receive it, let him receive it.

It is not consistent with this view of the context, to infer, even from the clause of exception, a permissive law of divorce on the ground of adultery: and it is the argument of Beza himself, in meeting the objection from the omission of the clause of exception, that even if the clause had been omitted by Saint Matthew, it would have been no prejudice to the doctrine; for the question of the pharisees did

not relate to divorce for adultery, nor was there any occasion for our Lord's resolving that question. He was asked, not whether divorce was allowed for adultery or any particular cause, but whether it was allowed for every cause. This was the ground of debate, beyond which the reply is not to be carried, unless the exceptive clause be added to the passages in Saint Mark and Saint Luke, from the texts of Saint Matthew[c].

Beza, acquiescing in the full force of the position, What God hath joined together let not man put asunder, and from thence taking occasion to deny the competence of man to admit new and arbitrary principles of divorce, nevertheless insists on the divine right and authority of divorce for adultery; in which he infers the divine concurrence from the capital punishment of the offence, and the consequent dissolution of the marriage under the Mosaic law; and enforces the clause of exception, which he supposes to have been conceded to the scruples of men, and for the guidance of magistrates, in questions of divorce. These are but remote conclusions from the text. The first argument is opposed by the general opinion of the first ages, that God dissolves the union of marriage, not by divorce, but by death in the course of nature: and it is bold to argue from the capital punishment of adultery under the law, in interpretation of a rule of divorce equally foreign and unknown to that law. The clause of exception, interpreted in connexion with the position, Those whom God hath joined together let no man put asunder; and converted into a permissive law of

[c] Beza de Repudiis.

divorce, can only be appropriated to those whom God hath not joined together, or to those whom man hath put asunder. It is applied to adultery, on the ground that that offence, in destroying the essential unity, dissolves the obligation of marriage. It is not necessary to revert to the difficulties of this interpretation, an interpretation which cannot be pursued to its extreme results, without leading to the enquiry, How, if adultery makes the adulteress one with the adulterer, so as to be incapable of reunion with her husband, did not the previous union with her husband preclude her subsequent union with the adulterer? There is less difficulty in collecting the invalidity of marriage from the former clause, and in shewing that in incestuous and unlawful marriages, especially in the marriage of a Jew with an alien, God was so far from joining the parties together, that he had forbidden their union; and the man who married a heathen wife, whom he divorced for the marriage of a Jewess, in availing himself of the clause of exception, would not commit adultery by the second marriage; because the former marriage had been illegal and invalid. This interpretation corresponds with Griesbach's reading of the text: ὁς αν απολυσῃ την γυναικα αυτου μη επι πορνειᾳ, in which the words in question relate to the *state*[d] of the woman, and not to the act or cause of divorce, and may be properly translated, Whosoever shall divorce his wife, not being in a state of πορνεια, or

[d] Επι "*in* quum *statum quendam rei* significamus .... Demosthenes γιγνεσθων τινων επι συμφορᾳις." Schleusner. Compare Sap. i. 14. ii. 23.

alienation, i. e. not being a πορνη, or an alien wife. The term of γυνη επι πορνειᾳ, or μη επι πορνειᾳ, will exactly correspond with the γυνη μη παρεκτος λογου πορνειας, and the γυνη παρεκτος λογου πορνειας, with the wife exempt or not exempt from the charge of alienship, to which the other text of Saint Matthew relates, and beyond or beside which there could be no divorce without adultery. This interpretation also coincides with the opinion of Tertullian, that the marriage of the faithful with the unfaithful is conciliated by the evil one, and condemned by the Lord, who would rather that such marriages should be without ratification, than that there should be a dissolution of marriage; and therefore forbids divorce *nisi stupri causâ*, i. e. according to Tertullian's frequent use of the word, except in the case of the unlawful marriage of the believer with the unbeliever, which could not be contracted without violating the divine prohibition, and incurring the guilt of fornication, or alienation by marriage[e].

5. The fifth and last objection to the received doctrine of divorce for adultery is founded on the argument of Saint Paul to the Corinthians, in which he evidently refers to the doctrine of our Lord.

The apostle asserts the perpetuity of marriage without any limitation or reserve, except only of death: The woman who hath an husband is bound by the law to her husband, so long as he liveth; but if the husband be dead she is loosed from the law of her husband: so then, if while her husband liveth she be married to another man, she shall be called

[e] Ad Ux. l. ii. s. 2, 3.

an adulteress; but if her husband be dead, she is free from that law; so that she is no adulteress, although she be married to another man[f]. He repeats the same doctrine in the Epistle to the Corinthians; and in both texts the doctrine which he delivers is in perfect conformity with the law of our Lord, that the marriage of a man during the life of his wife, or of a woman during the life of her husband, is an act of adultery; that divorce, under cover of which the marriage proceeds, does not abate the adultery; and that there is no dissolution of marriage but in death. It is of importance to enquire, whether upon any other occasion he admits any other exception to the general rule and law of marriage, whether adultery or any other cause.

The privilege possessed by the proselytes to the Jewish religion, who, after their regeneration and admission into the commonwealth of Israel, were at liberty to abandon all the relations which had bound them in their heathen and unregenerate condition, together with the opinions which the Jews maintained of the nullity of such marriages as were contracted out of the *peculium*, may have suggested the doubt which the converts at Corinth entertained of the propriety of retaining the consorts to whom they had been married before their conversion, and which they submitted to the judgment of the apostle. If he did not acquiesce in the principle of the question, he expressed neither offence nor surprise at the proposition. The first and most general judgment which the apostle pronounced in reference to these

[f] Rom. vii. 2, 3.

cases of alien marriages, was, that every man should retain and keep possession of his own wife, and every woman of her own husband. This was his general opinion founded on the natural permanence and perpetuity of the conjugal relation, in the contract of which the parties had, as it were, transferred themselves one to another, and had no more the power of disposing of themselves. This was the case of persons both of whom had been converted, and were therefore under the apostle's jurisdiction, although they had been married before their conversion: and he affirms his own opinion of their case by alleging the authority of the Lord: Unto the married I command, yet not I, but the Lord, Let not the wife depart from her husband; (and if she depart, let her remain unmarried, or be reconciled to her husband;) and let not the husband put away his wife. It is the sound exposition of Horbery, that when the apostle in this chapter makes reference to the Lord and to a commandment, he means to recite a rule delivered by our Lord during his ministry: and that when he speaks in his own name and by permission, he means to deliver a precept on his own authority, recommended in the full assurance or persuasion of his divine inspiration. In referring therefore to our Lord's doctrine of the perpetuity of marriage, he recites it in its utmost latitude, requiring, that the wife should not be separated, (χωρισθηναι,) and that the husband should not divorce his wife, adding, that if the wife should be (or, in reference to an event which had already taken place, *should have been*) separated by her own or her husband's will, she should remain un-

married, or be reconciled to her husband[g]. In thus reciting the doctrine of our Lord, in proof of the indissolubility of marriage, he asserts the doctrine in its utmost latitude: and the only exception which he makes, either refers retrospectively to an actual state of separation by reason of πορνεια, or even if it be interpreted prospectively, and have any relation to the exception in our Lord's own doctrine, it is of importance to observe, that it was not an exception which dissolved the marriage; which released the woman from the obligation of remaining unmarried; which excluded the hope of reconciliation, or allowed the woman to put herself in a condition in which that hope could not be fulfilled. It could not therefore be adultery, according to the received opinion of divorce for adultery: and if the objection be made, that the woman would have been free under the proposed interpretation of the invalidity of an alien marriage, it may be answered, that the case to which the exception is appropriated is a case of alien marriage, in which both parties contracted under the same circumstances, and with the same views, both admitting the lawfulness of divorce, and the liberty of marriage after divorce. The apostle without scruple confirmed the marriage in consideration of the circumstances under which it was contracted: in virtue

[g] 1 Cor. vii. 10, 11. It is remarkable, that Tertullian gives to this rule the authority of our Lord: "Atquin et Christus, cum præcipit mulierem a viro non decedere, aut si discesserit manere innuptam, aut reconciliàri viro; et repudium permisit, quod non in totum prohibuit, et matrimonium confirmavit, quod primo vetuit disjungi; et si forte disjunctum, voluit reformari." Adv. Marcion, l. v. c. 7.

of his own authority over the parties after their conversion, he prohibited the new marriage, which, on the principle of the original union, might have followed the separation, but was incompatible with the Christian law, which attached adultery to the marriage of a woman divorced. The restriction of the woman only agrees with the restriction of the clause of exception.

The next case to which the apostle adverts, is the case of parties who were married before conversion, and one of whom was converted after the marriage: and he argues this case upon his own authority; recommending that the believer, whom alone he had power to instruct, should neither divorce nor desert the unbeliever of his own accord. It would seem, therefore, that the apostle was unwilling to apply the doctrine of our Lord to this variety of alien marriages; and that he was rather desirous of arguing it in his own name and authority. He introduces his judgment with this distinction: To the rest speak I, not the Lord: If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away: and the woman which hath a husband that believeth not, and if he be pleased to dwell with her, let her not leave him; for the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband: else were your children unclean, but now are they holy[h]. While the parties were willing to cohabit, he insists on the continuance of the union, from the effect which the behaviour of the believer might have upon

[h] 1 Cor. vii. 12—14.

the unbeliever, in winning him by the purity of her conversation to the belief of the truth; and from the advantage which their common issue would derive from from the federal holiness of the parent devolving on the children; from the probable initiation of the child into the Christian covenant by means of the believing parent; and from the loss of both advantages by the separation of the believer from the unbeliever[i]. It is remarkable, that the apostle argues this case solely upon the ground of expedience; that he cautiously abstains from the application of our Lord's doctrine, in respect either of the marriage or the separation of the parties; and that he does not make the duty of the believer in maintaining the union to rest on the obligation of the conjugal relation.

He proceeds to another case, which is more complicated, that in which an unbeliever married to a believer might insist on the right of divorce, and require to be separated; and, as neither his advice nor authority was likely to prevail with the unbeliever, he arbitrarily decides the case: If the unbeliever depart, let him depart: a brother, or sister, i. e. a believer, is not under bondage in such cases[k]. By the general rule of Christian duty, and on motives of expedience, the believer is not allowed to originate the separation, but required to continue peaceably in the state in which he was called: but if the unbeliever will separate, if he will insist upon the privilege of divorce implied in his original contract of marriage, the other party is not bound by a

[i] Dodwell, s. 20. [k] 1 Cor. vii. 15.

covenant, which, on the principles of the aliens, was confessedly dissoluble, and is free to assent to the separation. The apostle, saith Ambrose, denies it to be part of the divine law, that marriage should under any circumstances be dissolved; and he neither commands nor gives authority for the act of desertion; he merely takes away all blame from the party deserted. Other fathers have given a more extensive interpretation to the absence of the bond: thus Hilary saith: "the Christian is free in this case to marry another Christian: He is free, saith Photius, to depart, because the other hath dissolved the marriage. If he depart, say Chrysostom, Œcumenius, and Theophylact, because thou wilt not communicate with him in his infidelity, be thou divorced, or quit the yoke; for it is better that thy marriage should be dissolved, than thy piety. These fathers therefore plainly suppose, that the laws which say, He that marries her which is put away committeth adultery, Matt. v. 32. and that the wife is bound to the husband as long as he liveth, Rom. vii. 1, 2, 3. concerned only equal marriages, partly because the apostle saith, he hath no commandment of the Lord to produce for the decision of this case, and partly because he doth not here say, as in the case of equal marriages, (εαν χωρισθῃ,) if she be separated let her remain unmarried[1]." It is natural to ask, if the rule of indissolubility relates only to equal marriages, to what but unequal marriages does the clause of exception relate?

But is it certain, that the believers being not

[1] Whitby Com. in 1 Cor. vii. 15.

bound (ου δεδουλωται εν τοιουτοις) is equivalent to his being released, (κατηργηται,) and being free, (ελευθερα,) as the same apostle on another occasion, and in the conclusion of the present argument, describes the condition of the wife on the death of her husband? Is there not rather in the words an allusion to the servile condition of the wife in the marriage of the heathens and the Jews, and it may be to the peculiar condition of the slave, who was not emancipated nor free to marry without the express consent of the master, who had debauched and deserted her. The believer was transferred to a new lord, who had the paramount claim upon her allegiance, which she was not permitted to renounce at the will of an unbeliever, but which she did not compromise while she followed the rule of peace, and continued to cohabit with a husband who did not desire the separation. The extent of the believer's release must depend on the principle and authority on which the apostle means to assert that he is not under bondage. He affirms, with a limited exception, the continuance of the union contracted between two converts before their conversion on the authority of our Lord: he advises the continued union of the believer with the unbeliever on his own argument of religious expedience, expressly distinguished from the rule of our Lord: and then suddenly, and without any direct assertion or avoidance of the divine rule, permits the unbeliever to depart if he will, and decides that the believer is not bound in such cases. There is a remarkable contrast in the order of the two decisions: the permanence of the believer in marriage was expressly governed by the apostle, and not by

the Lord: did the Lord then allow him a licence of separation? The believer is affirmed, without reference to any authority, to be not bound to the unbeliever: on what principle then is he free? If the decision proceeds on the law of our Lord, it must be understood in connexion with the clause of exception, inserted in that law, permitting the separation of the believer from the unbeliever, but with a restriction, enforced by the apostle, precluding the believer, as a divorced person, from the right of marriage after separation. If it proceeds on the dissolubility implied in the terms of the original contract, the freedom which it gives to the woman is nevertheless subject to the admonition, Art thou loosed from a wife? Seek not a wife[m]. The only principle on which the believer can be separated from the unbeliever is the fault and invalidity of the original marriage, contracted in the name of false divinities, and upon terms repugnant to the divine institution; affirmed in the case of two converted believers, with the admission only of a restricted separation; compromised in the case of a believer with an unbeliever only on grounds of religious expedience; and held to be not binding upon a believer married to an impracticable unbeliever. The clause of exception is the principle on which the parties are separated; but it is so restricted as not to allow persons divorced to marry again.

[m] It is the comment of Tertullian, after reciting 1 Cor. vii. 39. Hinc quoque eam demonstrat intelligendam, quæ et ipsa sic fuerat inventa soluta a viro, quomodo et vir solutus ab uxore: per mortem utique non per repudium factâ solutione, quia *repudiatis non permitteret nubere* adversus pristinum præceptum.

It has been conceived, that the apostle's argument on the ground of expedience in favour of marriages contracted by unbelievers before their conversion, abated the prevailing offence of such marriages, and was perverted into a licence for the marriage of the believer with the unbeliever after his conversion; and that the prevalence of this abuse was the occasion of the animated admonition of the apostle in his second Epistle; Be ye not, in violation of the divine commandment concerning the use of beasts of different kinds, unequally joined together with unbelievers: for what fellowship hath righteousness with unrighteousness, or men that are justified with men that are not justified? What communion like that of marriage is between the opposite states of light and darkness, between men who know and men who do not know the Lord? What confederacy can there be between the hostile powers of Christ and Belial? What common part or portion hath he that believeth with an unbeliever? Or what common agreement and acknowledgment hath the temple of God with idols? If there can be union with men within and men without the covenant of God; if light and darkness can be brought together; if hostile powers can be associated and confederate; if the believer and the unbeliever can partake of the same mystical portion; if in the act of marriage an obligation can be laid upon both by a vow and covenant attested on the one part by idols, and on the other by the true God—then may the believer contract a suitable and valid marriage with an unbeliever, and there is no occasion for preserving the distinct and peculiar holiness of the family of God, and keeping it separate

from all matrimonial pollution with aliens and strangers from the sacred covenant[n].

It was the same case which was argued in the first Epistle, in the question of the apostle[o]: Shall I take the members of Christ, and make them the members of an alien? The apostle assumes the indignant answer of the believer, and in abhorrence of such a proposition exclaims, God forbid! But, in anticipation of the exception, that such an union would either not be marriage, or would not be a desecration of the members of Christ, he proceeds to ask, Know ye not, that he who is joined to an alien is one body, one body with her whom he marries, or one body with Christ whose member he is; for in respect either of the proper or the mystical marriage it is written, The two shall be one. The first question which he urges on the ground of its sinful tendency and violation of the purity of the Christian body, in terms of the most striking resemblance to those of the second Epistle, is the strongest dissuasive, if not an absolute prohibition, of these unequal marriages; however in the second question he may be thought to affirm them, by appropriating to them the terms of the divine institution, terms which may be justly and with little exception interpreted of the mystical union of the believer with Christ, or of Christ with his Church.

There is therefore no part of the apostle's argument in which he adverts to the clause of exception in our Lord's doctrine of divorce, if the clause be interpreted of adultery: if it be understood of the

[n] 2 Cor. vi. 14—18. See Dodwell, s. 22—29. [o] 1 Cor. vi. 16.

dissolubility of equal marriages, there are points of striking coincidence between the doctrine of the apostle and the doctrine of our Lord. They both speak of the same marriages, but under different circumstances: they both permit the separation, which they do not require, and which the apostle under the circumstances holds to be inexpedient: and they do not concede to divorced persons the privilege of entering into new marriages. This restriction limits the operation of the clause of exception.

An argument resting so entirely upon its own merits should not be deprived of the strong corroboration which is found in a passage of the writings of Tertullian, in which he obviates the objection founded in the affirmation of such marriages contracted before conversion, and the prohibition of such marriages after conversion: It was asked; What is the difference in the cases of him who embraces the faith in marriage with a heathen, and of him who believes before such marriage, that they should not take equal care of their own persons, (or of the flesh or body to which they properly belong, *carni suæ*,) that the one should be restricted from a marriage in which the other is required to persevere? Why, if there be pollution in marriage with a heathen, is not the one separated, as the other is not bound? This was the objection: in the answer, Tertullian chiefly relies on the authority of our Lord, who would rather that such marriages should be without ratification, than that being ratified they should be liable to dissolution, and therefore forbids divorce *nisi stupri causâ*, except in the case of the marriages of the

faithful with the unbelieving. He argues further, that the one is under a necessity of persevering in the marriage, while the other has a discretionary power of not marrying. According to the Scripture also, they who are apprehended by the faith in marriage with a Gentile, are not polluted, because others may be sanctified with them: but without doubt, they who were sanctified before their marriage, if they combine themselves with strange flesh, cannot be supposed to sanctify that flesh. The grace of God sanctifies men in the state in which it apprehends them. He then asks, Shall we on such occasions present the registers of such marriages at the tribunal of the Lord; and pretend that the marriage which he has forbidden is duly contracted? Is not this the offence which he has forbidden under the name of adulterium, stuprum? (or πορνεια.) The admission of a stranger does not more violate the temple of God; it is not a worse contamination of the members of Christ with the members of an alien[p].

The sense in which Tertullian understood both the word and the text in this passage, are too clear to be disputed; and in the absence of other explicit and distinct assertions of the absolute nullity of these unequal marriages, an appeal may be made to the fact, that such marriages were from the very age of the apostles, discountenanced in the Church; and that the strongest exhortations were used to prohibit and prevent them. When the apostle permits a woman, after the death of her husband, to marry

[p] Ad Ux. l. ii. s. 2, 3. See Appendix, No. I.

whom she will, with the reservation that the marriage be *only in the Lord*[q], he has been generally understood to require that a Christian woman should marry none but a Christian man. This was the exposition of Tertullian, that the apostle, in the words *only in the Lord*, forbids the marriage of the believing with the unbelieving, and refers to the law of the Creator, every where forbidding, as the ancient law annulls, marriage with men of foreign tribes[r]: and asserting of his own authority, that men, in contracting such marriages, were liable to the imputation of πορνεια. Cyprian follows the authority of his master, and maintains, in a distinct proposition, that marriages are not to be contracted with the heathen; and that to form the bond of marriage with the unbelieving is to prostitute the members of Christ to the Gentiles[s]. Jerome, Ambrose, Sedulius, and Theodoret, all understand the apostle's words, of marrying *only in the Lord*, in the same sense, and are earnest in their admonitions against such marriages. Augustin, who (as might be expected in a later writer) was less decided than other fathers in thinking that such marriages were forbidden, nevertheless admitted that it was a doubtful and difficult question, and contended that he had no power to sanction such marriages[t].

It is but natural that very different opinions should now prevail, of the effect of such marriages, from those which were entertained by the primitive

[q] 1 Cor. vii. 39. [r] Adv. Marc. l. v. c. 7. [s] Lib. Test. iii. s. 62. De Lapsis. [t] Bingham's Eccl. Antiq. b. xxii. c. 2. s. 1.

writers, who were witnesses of the evil, which they laboured to restrain. Tertullian describes their pernicious operation with the most affecting eloquence: The handmaid of the Lord now tarries with the strange deities; and among them the dæmon, at the beginning of the month, at the beginning of the year, is to be moved with the smoke of incense, in all the solemnities, in all the honours of kings. Crowned with laurel, and conducted by the light of candles, she proceeds from the gate, as from the court of public lust: she lies down with her husband in the association of his colleagues; and she, who was once accustomed to wait upon the saints, now ministers to the impious: and shall she not here read the prelude of her own condemnation? How shall she observe those whom she was about to judge? Whose hand shall she desire? Of whose cup shall she partake? What shall her husband sing to her, or she to her husband? She may hear indeed of the stage, the tavern, and the brothel; but what mention is there of God? what invocation of Christ? what encouragement of faith from the mutual reading of the Scriptures? where is the refreshment of the Spirit? where is the blessing of God? All is foreign; all hostile; all disapproved; sent by the evil one for the confusion of salvation[u].

This is not the place to enter into detail of the opinions which different ages have entertained of these marriages, or of the measures which have been devised for restraining them. Their nullity was asserted in successive Canons of the Church; and

[u] Ad Ux. l. ii. s. 6.

Beza, who objected to this judgment, nevertheless maintained that they were dangerous, that they were unwise, and worthy to be restrained by civil penalties. The learned Miegius[x] ascribed to the prevalence of these unequal marriages the deluge, and the confusion of the tongues at Babel; and insisted on the care of Abraham to prevent them in his posterity, and on the strict prohibition of them in the ancient law. He pronounces them the fountain of evil manners, heavy judgments, a depraved posterity, and the corruption of religious communion; and from their natural consequence justifies the dissolution of the marriages with the strange wives, and the removal of their issue at least from the privileges of Jewish children. He maintains the prohibition of these marriages in the New Testament, (2 Cor. vi. 14. 1 Cor. vii. 39. Acts xv. 20.) and among the primitive writers; and in the conclusion insists upon the effect of these marriages, that where there is not a community of religious principle, there will be a continual attempt, on the part of one consort, to withdraw the other from his religious profession, and a consequent excitement of hatred among the children, in the family, and in the whole conversation. Leslie, the reasoner not to be reasoned against, exposed the practical inconvenience "Of Marriages in different Communions;" and in reference to the agreements on which such marriages usually proceed, affirmed that neither party could engage to acquiesce in a false religion, without attempting to satisfy the scruples and instruct the reason of the other; and that

[x] De Off. Pastoris, c. xvi. s. 21.

the parental duty required the education of the children in the belief of the truth. The very learned Henry Dodwell, in his elaborate prosecution of the argument of Leslie, held, that in unequal marriages there is a disparagement of the issue of the faithful, which thus becomes a mixed seed, separated and estranged from the fœderal holiness of the believing parent; and that the offence is aggravated by the different mysteries, matrimonial and economical, observed by the different parties. He pursues the course of this argument through the several histories of the Old Testament, to the time of the apostles; when he asserts, that the prevailing opinion of the effect of marriages out of the peculium, suggested the question proposed by the Corinthian converts. He presses into his service the argument of the apostle upon this occasion, corroborating his position by the authority of the earliest fathers, and observing the effects of the naturalization of either parent upon the issue. He further argues, that the marriage of a believer with an unbeliever was an act of apostacy or alienation, which, being dedicated to God, he was not free to make; and that all contracts, made for the education of the children in different religions, are void; because the wife, by the inequality of her condition, is incapable of contracting; and the husband cannot alienate the property which belongs to God, especially if he himself is contracted in the mystical union of Christ with his Church, which is the ground of the apostle's argument for the nullity of marriages out of the Church. The same obligation is upon the woman, who is not capable of alienating herself, or of being alienated by others.

These arguments against unequal marriages are pressed, without any reference to the principal text in question: but they do not abate the force of the proposed interpretation, or of the objections against the received doctrine of divorce for adultery, founded on the unauthorized exposition of the clause of exception, on the omission of that clause, on the violence of the inference from that clause, and from the context, and from the silence of Saint Paul in reference to that clause, unless it be understood in the sense proposed, which in this argument has been adopted, chiefly because it is most agreeable to the exposition of the word, the text, and the doctrine, by Tertullian and Cyprian; because it is most analogous to the Hellenistic use of the word, and to the predominating notion of the Jews, in the estimation and description of the marriages in question.

The exposition of adultery is unauthorized by the use of the Hellenistic and primitive writers. At the same time there is no scruple in admitting, that while the word, in the judgment and use of the Jews, principally denoted the incest attached in their sense to alien marriages; it is also used by Saint Paul, 1 Cor. v. 1. for another kind of incest, for incest known and unknown to the heathen; and, according to Hammond, it denotes all the incestuous marriages forbidden in the Levitical law. It will not contradict the argument maintained in this section, or that which is founded in the difficulties of the doctrine of divorce for adultery, if it be understood by a synecdoche of one for every kind of incest, if its interpretation be only restricted to an impediment precluding and vitiating, and not ex-

tended to offences following the marriage, and dissolving the contract. The entire indissolubility of marriage, rightly contracted, is the only conclusion which it is proposed to draw from the difficulties which embarrass the principle and practice of divorce. Impediments to marriage have unquestionably been admitted in all ages of the Church, in all parts of the globe: are they also sanctioned by the word and authority of our Lord?

SECTION IV.

History of the Christian Doctrine of Divorce.

THE objections which have been made to the licence and privilege of divorce, and the attempt to restrict the dissolution of marriage to cases of previous disqualification, involve a degree of practical importance, and at the same time rest on principles so remote from the received practice and common apprehensions of mankind, as to require the production of every argument and authority which can be brought forward in their defence. It will be necessary therefore to resume the history of the doctrine of divorce, in which it may be convenient to follow the arrangement of Selden, by whom it is divided into three principal æras; including, 1. the age before Constantine; 2. the age between Constantine and Justinian; and, 3. the age between Justinian and the decay of the Empire in the East, and the Reformation of the Church in the West. Into these several periods the chief writings and authorities of the Church may be distributed; and materials may be collected, from which it may be shewn, how far the rigour of the original doctrine was from time to time accommodated to the rule which had obtained among the Heathens and the Jews; by which the faint traces and lineaments of the primitive law may be drawn out as they appear in the several ages and periods of the Church; and which may prove the necessity of adhering to the strict sense and meaning of the words of our Lord, if they can be ascertained, instead of

following the degenerate practice of his disciples. The chief objects of the enquiry will be, the dissolubility or indissolubility of marriage; the progress of divorce for adultery, and of the restriction or licence of contracting new marriages; and the prohibition and nullity of alien marriages, of marriages contracted between the believing and the unbelieving. The result of the enquiry will serve to vindicate the general practice and doctrine of the Church and the law of England in restricting the right of divorce, and in maintaining the indissolubility of marriages rightly contracted, and not precluded or vitiated by previous disqualification.

It is not necessary to revert to the origin and progress of divorce among the Romans, and its mischievous and unhappy effects; or to the circumstances under which the permissive law of divorce was conceded to the Jews, and the extent to which it was eventually abused. It is too plain to be denied, that this permission received no countenance from our Lord, who either restricted divorce to the one case of adultery, according to the received interpretation, or asserted, that marriages founded in incest, particularly signified in alien marriages, were null in themselves, as it has been attempted to be proved. It does not appear from the investigations of the writers who have examined the subject, that the question of divorce was agitated in the first ages, or by the primitive writers, of the Church; and they have been generally content to argue upon the authorities of a later age, in which the purity of the original practice had degenerated, and the Hellenistic idiom had fallen into disuse. To the genuine writers

of the apostolical age divorce was unknown. Among the first Christians there was no adultery: it was one of the offences which they bound themselves under the sanction of an oath not to commit. The λυσις γαμων, variously interpreted of the prohibition of marriage, or of the dissolution of marriage, was one of the doctrines imputed to the ancient heretics: but such was the purity of the first age, that it afforded no practical comment on the evangelical or apostolical doctrine of divorce: and a doubt of considerable importance is raised by Selden, whether, when the first writers treated of divorce, they contemplated both parties as Christians, or one only as a Christian, and the other an alien, whether a heathen or a Jew[a]. If in the former case the marriage was lawful, and therefore its indissolubility was not brought into dispute; or if in the other the marriage proceeded on principles not authorized by the true religion, and was therefore liable to be dissolved; if either part of this hypothesis could be established, the point which has been contended for would be decided. It is certain that the earliest writers agreed in the opinion that there was but one cause of divorce, and that that cause was *fornication:* but they differed concerning the extent and meaning of the term; some supposing it to comprehend spiritual fornication, or the alienation and apostacy of idolaters and unbelievers; others restricting its meaning to carnal fornication, which in married persons is adultery; and others conceiving, that other offences, equal to fornication, were included in the term, and constituted

[a] Ux. Ebr. l. iii. c. 28.

just causes of divorce. Bingham supposes the first and the last interpretations to be private opinions, and the second, which restricted divorce to adultery, to be the received doctrine of the Church[b]. The difficulties of the question are such as cannot be denied, and can only be resolved by the weight of the evidence.

It may be useful here to recapitulate the different cases, which, it is argued, have been decided upon sacred authority. If our Lord, according to Whitby and the argument which has been maintained in these pages, delivers a general rule concerning equal marriages, the permanence of those marriages is unequivocally asserted, and the clause of exception can relate only to the doubtful validity of unequal marriages. The first case decided by the apostle is a case of marriage, equal in a certain sense, in which both the parties, before the marriage, were aliens, and after their marriage were converted. This marriage was affirmed on the ground of the general permanence of marriage, established on divine authority, with an exception, referring either to an actual separation, before the appeal to the apostle, or to the contingency of a future separation; but in either case prohibiting any new marriage, in consequence of the separation. The next case is that of a marriage, also equal at the time of contract, between two aliens, but rendered unequal by the subsequent conversion of one of the parties: and the continuance of this marriage is recommended upon motives of expedience, on condition of the consent of the

[b] Bingham's Eccl. Antiq. b. xxii. c. 5. s. 1, 2.

unbeliever; motives and conditions from which the original invalidity of the contract may be inferred. This invalidity is expressly asserted in the third case, of an unbeliever desiring to be separated from a believing consort; in which the one is, without any scruple, suffered to depart, and the other is pronounced to be not bound. In the three cases, the clause of exception in our Lord's law of divorce, interpreted of alien marriages, of which, under that very name, the apostle is professedly treating, is the principle on which the voidability of the marriage is declared, so far as to allow the separation of the parties, without permitting the Christian consort to enter upon another marriage—an indirect proof of the restricted application of that clause. There is yet another case of a believer, after his conversion, marrying an unbeliever; and this is argued upon such views of its sinful tendency, as would justify the conclusion of a nullity of the contract, from its opposition to the will and institution of God. In all these cases there is not an insinuation of the dissolubility of a valid marriage, nor the shadow of a deviation from either of the general assertions of the apostle: A woman is bound by the law to her husband, so long as her husband liveth: but if her husband be dead, she is free to marry whom she will, only in the Lord[c]. But the unbeliever may depart: a believer is not bound in an unequal marriage[d].

It is of importance to remark, that the first Christian writer who treats of divorce, whether he be or

[c] Rom. vii. 2, 3. 1 Cor. vii. 39. [d] 1 Cor. vii. 15.

be not the apostolical Hermas, coincides entirely in the doctrine which has been maintained; allowing a husband to separate from his wife for idolatry, but not permitting him to marry another woman, or to put himself out of a condition to receive his wife in the event of her repentance. It is also remarkable, that the case which he puts is one which was unnecessary and had been decided, if the words of our Lord and the words of Hermas (extant only in a barbarous translation) are to be understood in the received and ordinary sense of adultery; while in the interpretation proposed in the last section and detailed in the Appendix, Hermas supplies the only deficiency in the series of cases decided upon scriptural authority. The general rule of our Lord governs all cases of equal marriage; the exception relates to unequal marriages: the apostle determines the respective cases of two believers, both converted after their marriage; of a believer married before conversion, whether to a practicable or impracticable unbeliever; and of a believer, after his conversion, marrying an unbeliever: the only remaining case supplied by Hermas, is that of a believing wife apostatizing after her marriage with a believer. The question which he puts is this: Permit me, Lord, to speak a few words with thee: If a man has a wife believing in the Lord, and he detects her in apostacy, (*adulterio*,) does he offend if he lives with her? The Lord answers: As long as her husband is ignorant, he is without crime in living with her: but if he knows that she has offended, (or apostatized *deliquisse*,) and has not repented, but persists in her apostacy, (*fornicatione*,) and he continues to live

with her, he becomes guilty of her offence, and a partaker of her apostacy (*mœchationis*). Hermas pressed his question: What then if the woman persists in her fault? And the Lord said, Let her husband send her away, and let him remain by himself. But if he shall send his wife away, and marry another, he also commits adultery. Hermas further asks: If the woman dismissed shall repent, and desire to return to her husband, shall she not be received by him? The Lord answered: Yea; if her husband shall not receive her, he also incurs great guilt: he ought to receive his offending wife upon her repentance. . . . . In contemplation of her repentance, he ought not upon the divorce of his wife to marry another. The course is the same in respect of the man and of the woman. Adultery is not only in those who pollute their flesh; but he who makes an image commits adultery, (or is guilty of such apostacy as justifies divorce.) But if the woman persists in these practices, and does not repent, withdraw from her, and live not with her; otherwise thou also wilt be partaker of her offence[e].

Without ascribing to this passage any authority beyond that of a primitive and ancient testimony of contemporary practices and opinions, it may be remarked, that if the passage be understood of divorce for adultery, it is so far opposed to the common argument of the dissolution of the bond by the adulterous act, that it plainly restricts the clause of exception, and gives no licence, even to the innocent

[e] Hermæ Pastor. l. i. Mandat. 4.

husband of an adulterous wife, to marry another woman, without incurring the guilt of adultery: it anticipates the repentance of the wife, and affirms the obligation of the husband to receive her on her repentance; an obligation quite incompatible with the alleged dissolution of the bond. The ambiguity of the term is however expressly admitted in the conclusion, which asserts that adultery, properly so called, was not to be understood exclusively of apostacy as a ground of divorce, even if apostacy is not the principal and only ground. If the term of offence be understood of religious apostacy, of the apostacy of a believing wife after her marriage, the decision corresponds with the permissive law of divorce suggested in the clause of exception, and with the cases determined by the apostle, in the series of which it supplies the only deficiency. It is not easy to conceive that a husband, by living with an adulterous wife, could or would be partaker of her adultery; but if the woman should apostatize after her marriage, he was instructed to separate from her, for the vindication of his own purity from the contamination of her influence and example; and to continue the separation so long as she persisted in the offence: but the bond of marriage subsisted notwithstanding the separation: the husband was not free to marry any other woman, without imputation of adultery, nor at liberty to refuse his wife upon her repentance. The case argued by Hermas is that of a wife in the fullest sense of the term: he throws no doubt on the validity of the original marriage.

This passage of Hermas has been called "the

origin and fountain of all that persuasion concerning the utter indissolubility of marriage, which was afterwards so zealously espoused by the Latins, which the Greeks and Armenians refused to receive[f]." This opinion was derived from the highest and the holiest source, the law of marriage delivered by our Lord in its purity, and unembarrassed by the improper use of the clause of exception: and it was sanctioned by the best and earliest authorities in the Church, and the full current of primitive tradition. There can be little doubt, that the case proposed by Hermas was founded on the original exposition of the clause of exception, supported by the doctrine of the apostle, and corresponding with the opinion of the primitive Church, which upon no other ground could have made the apostacy of idolatry the first and chief, if not the exclusive, principle of a lawful divorce. This opinion may be illustrated by an interesting anecdote of this primitive period, preserved by Justin Martyr, of a Christian woman who separated herself from a heathen and adulterous husband, not on the ground of his adultery, but for the preservation of her own faith and piety: and it was in this period also, that the virgin martyr Thecla refused, on the ground of his hatred to Christianity, the marriage of a man to whom she had been espoused, and divorced herself; for the bond of marriage lay in the espousals[g]. In these instances there is a plain recognition of apostacy as a ground of divorce, in direct correspondence with the doctrine of the apostle: A brother or sister is not bound in such unequal marriages.

[f] Nuptiæ Sacræ, p. 107. [g] Ux. Ebr. l. iii. c. 28.

Dodwell[h] explains the precept of Barnabas: Thou shalt not be joined with them that walk in the way of death; of marriage out of the peculium, as an interdiction of the contract, which in the general course of his argument he holds to be null.

The primitive heretic, Ptolemæus, whom Grabe would make contemporary with Hyginus, or the early part of the second century, in commenting upon our Lord's revision of the Mosaic law of divorce, affirms, that "our Lord shews that the law of God, which forbids the separation of the husband from the wife, is different from the law of Moses, which permits the yoke to be dissolved, on account of the hardness of heart prevailing among the people: and in this respect Moses gives a law contrary to that of God; for his law is opposed to the indissolubility of marriage[i]." The object of Ptolemæus is to shew that the Mosaic law was composed of the positive commandments of God, and of the private suggestions of Moses and the elders: his comment affords evidence of the prevailing opinion of the indissolubility of marriage in its widest sense.

Athenagoras continues the evidence of the indissolubility of marriage, of which with some of the primitive writers he extends the obligation beyond the grave; an extension perfectly irreconcileable with the dissolution of marriage even for adultery. "Every one of us esteems her to be his wife, whom he married according to the laws, and conceives himself under obligation to remain in the condition

[h] Of Marriages in different Communions, s. 45. [i] Apud Grabe Spicileg. vol. ii. p. 72.

which he held at the time of his spiritual birth, or to continue in one marriage. For a second marriage is but a decent adultery; for the Lord says, Whosoever shall put away his wife, and marry another, committeth adultery; not permitting the divorce of the woman whom he married in her virginity, nor the accumulation of marriage upon marriage; for the man who separates himself from his first wife, even if she be dead, is an adulterer in disguise, violating the work of God; for God in the beginning created one man and one woman; and dissolving that union of flesh with flesh, which was consolidated for the production of a common issue[k]."

Theophilus is the first writer who recites the clause of exception, upon which he delivers no commentary, beyond the general course of his argument, in which he adverts to the danger of marrying a divorced woman, founded on the right retained in her by her former husband: "Concerning chastity, the holy word teaches us not only not to sin in deed, but even in respect of our thoughts, not to meditate any evil in the heart, or even to look with the eye upon another man's wife, to desire her. Therefore Solomon the king and prophet said, Let thine eyes behold the thing that is right, and thine eyelids turn to righteousness: make straight paths for thy feet. But the voice of the Gospel teaches us yet more earnestly concerning chastity: Whosoever looketh upon another man's wife, to desire her, hath already committed adultery with her in his heart: and whosoever marrieth a woman divorced from her husband

[k] Legat. pro Christianis, s. 33.

committeth adultery: and whosoever putteth away his wife, except for the cause of fornication, causeth her to commit adultery. Because Solomon saith, Who shall bind fire in his garments, and not burn his garments; or who shall walk upon coals of fire, and not burn his feet? So every man that goeth unto a woman that hath an husband shall be guilty[l]." So clearly does he assert the woman divorced to be ὑπανδρος, liable to the claims of a husband.

In the time of Tertullian the question of marriage and divorce was warmly disputed among the heretics, who would have taken away the rights of marriage[m]. In opposition to their doctrine, it was held by Tertullian, that Christ came not for the division of marriage, or the destruction of the conjugal union[n]; and he was zealous in upholding the indissolubility of marriage, and the restrictions upon divorce. With other monogamists he pushed the indissolubility of marriage to the extravagant length of asserting the continuance of the obligation after the decease of the consort. It was thus that he made one part of that sanctification which is the will of God to consist in monogamy and the renunciation of the sex, when the first marriage had been cut off: and he made the merit of this virtue to rest in submission to the will of God, who but for the purposes of his will would not have brought the first marriage to a conclusion[o]. He affirms second marriages to be a kind of fornication, (or incest,) and indulges in an argument which might affect the purity even of the

[l] Ad Autolyc. l. iii. s. 13. [m] Adv. Marcion, l. i. s. 22.
[n] Ad Ux. l. i. s. 3. [o] De Exhort. Castitat. s. 1, 2.

original marriage[p]. It is with the most artful address that he considers the relation which a woman bears to a deceased, compared with a divorced, husband: "She is not divorced from the man, from whom she has not received, to whom she has not sent, a bill of divorce: she retains possession of the man, whom she would not have lost; she should therefore maintain her constancy to him, whom she cannot divorce, and whom, if she were in a condition to divorce, she would not marry another man. She prays for his soul, and makes offerings on the day of his decease, in hope of the destined reunion in a better state, where we shall recognize both ourselves and those who are dear unto us[q]." He enforces his argument, by asking, What shall be the limit if second marriages are allowed? and how, if the ministers of the Church are to be the husbands of one wife, can they concur in giving more than one wife to the people, who, being in a certain sense a spiritual priesthood, should conform with the sacerdotal rule? He again affirms second marriage to be unlawful, and liable to the judgment of adultery; for what, he asks, is adultery, but unlawful marriage[r]?

The doctrine of the monogamists was in direct opposition to the doctrine of the apostle, which permitted the wife to marry after the decease of her husband, with no restriction, but that she should marry *only in the Lord*, or none but a Christian man. The Psychici pressed the monogamists with

[p] De Exhort. Castitat. s. 9. [q] De Monog. s. 10.

[r] Ibid. s. 11, 15. Under the name of *adultery* he probably means πορνεια in the sense of incest. Compare Ad Ux. l. ii. s. 3.

this objection; and there was at least ingenuity in the sophistry with which it was evaded by Tertullian, alleging, generally, that if a second marriage was allowed, marriage was allowed indefinitely; that second marriages were at variance with the primitive institution, with the discipline of the Church, and with the apostle's admonition, that the time was short. He supposes that the design of the whole chapter (1 Cor. vii.) was accommodated to the infant condition of the Church, and that in the beginning of it the apostle particularly addresses himself to such as having been married before they embraced the faith were apprehensive that it would not be lawful to continue in the use of their proper marriage, which the apostle rather permits than commands. He supposes the same design in the apostle's argument upon divorce, and the same accommodation to those who had actually meditated separation, and did not think themselves justified in continuing in their Gentile marriages after their belief; and the same address in respect of those who were bound, and those who were loosed. But if thou hast taken a wife thou hast not offended: i. e. according to Tertullian's exposition, if a man who had been released from the matrimonial obligation before his conversion should marry another wife, the wife whom he took after his profession should not be called his second wife, for faith (like the Jewish proselytism) was the beginning of a new life with new relations. It is with this exposition that Tertullian would reconcile the permission of the apostle in the conclusion of the chapter, of the freedom of the widow to marry in the Lord, which he restricts to a woman

free from a husband, as the husband is free from the wife, by death, not by divorce; for he would not allow to persons divorced a liberty to marry in opposition to the ancient precept. Thus the woman, in marrying according to the apostle's licence, would not offend against the principles of the monogamists, for he would not be a second husband, who was the first husband after her conversion, or, as the apostle speaks, *in the Lord.* It was the case, according to Tertullian, of the Christian widow of a heathen husband, who was not restricted from marrying a Christian husband[s].

These opinions of the monogamists could not have been embraced, but in a firm though exaggerated conviction of the indissolubility of marriage; and although it be true that Tertullian was a monogamist, he was more consistent in maintaining the doctrine, than in adhering to the sect. The view which he took of second marriages, as a kind of fornication, adultery, or incest, corresponds with the indiscriminate manner in which he translates the clause of exception; and, although he does not actually apply the clause in proof of the nullity and dissolubility of these marriages, it is not unreasonable to assume, that he held the opinion of their invalidity. It was the substance of his argument, that the permanence and indissolubility of a first marriage gave to the second a character of incest; while the invalidity of a former marriage with a heathen rendered a subsequent marriage with a

[s] De Monog. s. 11. Compare Ad Ux. ii. s. 2.

Christian a marriage in the Lord, a marriage just in its principle, and firm in its obligation.

Tertullian affirmed not only the indissolubility of marriage, but the restriction of divorce.

From the apostle's expression, that he has no commandment of the Lord, but gives his advice only, he takes occasion to assert, that there is not in the Gospels, or in the Epistles of Saint Paul, any precept of God permitting the separation of marriage; and from hence he infers the validity of one single marriage, because what is not found to be permitted, is concluded to be forbidden[t]. He assumes, as the ground of an hypothetical argument, that if Christ took away the divorce which Moses commanded, . . . and that if it is not just that marriage should be separated, it is not honest that it should be repeated[u]. He argues, that as it was the purpose of Christ to restore all things to their primitive condition, so especially in the case of divorce, which was conceded by Moses to the hardness of the people's heart, but was not from the beginning, Christ recalls the individuality of marriage to its primary institution, and forbids man now to separate the two, whom God at the beginning joined into one; and thus the individuality of marriage, as it was at the beginning, and the restraint of divorce, which was not from the beginning, (are restored,) and the whole man is recalled to paradise, where he was in the beginning[x]. He further insists upon the reasons for which Christ prohibited the divorce which was before permitted; 1. because it was not

[t] De Exhort. Castitat. s. 4. [u] De Monog. s. 14. [x] Ibid. s. 5.

from the beginning; 2. because man may not separate what God has joined together. For he who hath consolidated should alone dissolve the union; and he will dissolve it, not by the rigour of divorce, which he disapproves and restrains, but by the debt of death. There is another concurring reason, or rather the same, and not another, but one which imposes the primitive form, and which moved the divine will to the prohibition of divorce. Whosoever putteth away his wife, except for the cause of fornication, causeth her to commit adultery; and whosoever marries a woman divorced committeth adultery: for a divorced woman cannot lawfully marry; and if she attempts any thing of the kind, without the title and denomination of matrimony, it escapes the charge of adultery, because adultery is founded upon (the validity of) marriage. Matrimony is, when God joins two persons into one flesh, or, finding them joined, seals their union. Adultery is, when the two persons are separated in any manner, and another and foreign flesh is introduced, of which it cannot be said, This is flesh of my flesh, and bone of my bone, which can be said only of the original marriage. This was the argument of Tertullian, in which he insists upon the adultery following an unjust divorce, and in which, although he recites it, he makes no use of the clause of exception, and certainly does not apply it to remove the prohibition of marriage after divorce, or to abate the adultery consequent upon such marriage, which are asserted in the succeeding sentence. It was however objected against the monogamists, that God, in forbidding the divorced woman to marry during the life of her husband,

permitted it after his death: and hence it was argued, that, if she is not bound to a deceased husband, she is not bound to a living husband, for divorce supersedes the marriage not less than death, and the woman is under no obligation to the man from whom she is taken away. The argument rested on scriptural authority; the inference was at least arbitrary and remote; the objection was however strongly put; and the answer proves the sentiments of Tertullian, who replied, that, whether the husband be living or dead, the woman is equally guilty of adultery in admitting other flesh than that which God had united, or had found united. Christ therefore took away divorce, which was not from the beginning, that he might establish what was from the beginning, the constant adherence of the two in one, that there might be no occasion or necessity for a third concarnation, permitting divorce for the only cause, if that should have happened which it was intended to guard against, *si forte prævenerit cui præcavetur*[y]. It will be admitted, that the final allusion to the clause of exception is not of very obvious or easy interpretation: the terms may be thought to imply an impediment or prohibition precluding the marriage, and it is consistent with the immediate argument, and the general scope of the discourse, to understand an union in which God has not united the parties, nor found them united, and especially of a second marriage voided by the continued validity of the first, notwithstanding the death or divorce which was supposed to dissolve the obligation.

[y] De Monog. s. 9.

: It was an opinion common to Marcion and the early heretics, that there were two separate divinities, the one of the Old, the other of the New Testament; and in support of this opinion they alleged certain discrepancies in the doctrines of Moses and of Christ. Divorce was one of these differences: Moses permitted what Christ forbade. Hence Marcion objected: Christ forbids divorce, saying, Whosoever shall put away his wife and marry another commits adultery; and whosoever marries a woman divorced from a husband equally commits adultery: thus prohibiting divorce by making it unlawful to marry a woman divorced. But Moses permits divorce: When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her, let him write her a bill of divorcement, and give it into her hand, and send her out of his house. See you not therefore the difference of the Law and the Gospel, of Moses and of Christ? In this objection Marcion understood by divorce such a dissolution of the former marriage as would authorize and confirm a subsequent marriage, and, in supposing such dissolution peculiar to the Law, he ascribed to the Gospel the doctrine of the indissolubility of marriage, which he asserted it to hold without any exception. Tertullian admitted the alleged difference, and insisted upon the conditions on which divorce was prohibited by Christ, replying, that Marcion had overlooked the other Gospels, in which our Lord discussed the proper question of divorce, and by his answer defended the constitution of Moses, as belonging to him, and set right the

institution of the Creator, as if it belonged to himself: and if it had been his design to prohibit divorce, he would rather have palliated than destroyed the law of Moses. But, instead of that, he made the prohibition of divorce conditional, (so that it should be an offence,) if a man should put away his wife and marry another: Whosoever shall put away his wife and marry another commits adultery; and he is equally guilty of adultery who marries a woman divorced from a husband, if she be divorced for a cause (or end) for which it is not lawful that she should be divorced, viz. that another may be married: for the man who marries a woman unlawfully divorced, is as much an adulterer as if the woman had not been divorced at all. For the marriage remains which is not duly dissolved; and while the marriage remains the woman cannot marry another man without imputation of adultery. Thus if Christ prohibits divorce conditionally, he does not prohibit it altogether; and what he does not altogether prohibit, he allows. It is otherwise when there is an absence of the cause for which he prohibits divorce: he then indeed does teach in opposition to Moses, whose rule he otherwise preserves, not to say affirms. The reader will observe, that thus far Tertullian conducts the argument on the sole authority of Saint Luke, which he does not embarrass by inserting the clause of exception, or by any insinuation in prejudice to the indissolubility of marriage, or in favour of divorce, beyond the mere separation of the parties, of which he makes the offence to consist in the consummation or the contemplation of marriage after the divorce. Such views of divorce were consistent

with the notions which as a monogamist he entertained of the renunciation of the sex. He proceeds to press his adversary with the consequence of his own principles: If you deny altogether the permission of divorce by Christ, how do you dissolve marriage, who neither join the man and the woman in marriage, or admit them, if they are married, to baptism and the eucharist, unless they conspire against the fruit of marriage as against the Creator himself? What does your husband do if his wife commits adultery (or apostacy)? Does he retain her? Not even your own apostle permits the members of Christ to be made members of an abandoned woman: (*prostitutæ*, whether a prostitute or an alien.) The righteousness of divorce has therefore the authority of Christ: and hence he confirms Moses, who permits divorce for the same cause as Christ; namely, if there shall be found in the woman any uncleanness. For in the Gospel of Matthew; Whosoever shall put away his wife, except for the cause of fornication, causes her to commit adultery; and he is equally an adulterer who marries a woman divorced from a husband. But, except for the cause of fornication, neither does the Creator separate what he has indeed joined together: for the same Moses, in another text, has ordained, that the man who marries a woman whom he has violated may never dismiss her: and if marriage contracted by violation shall stand, and be of permanent force and obligation, how much more that which is voluntary and by agreement? According to Malachi: Thou shalt not dismiss the wife of thy youth. Christ is therefore in every thing following the steps of the

Creator, both in permitting and in prohibiting divorce. He, to whatever subterfuge you may resort, is the guardian of marriage, which, by prohibiting divorce, he wishes not to be separated; and which, by permitting divorce, he suffers not to be held with a stain. Tertullian proceeds in the conclusion to consider by what particular circumstance Christ was led to deliver his doctrine, and to what point it was directed. It was connected, in his judgment, with the mention of John, and his opposition to the incestuous and adulterous marriage of Herod with his brother's wife, which the law only allowed on the decease of the brother without children. Thus he aimed at Herod in the figure of an unlawful marriage and adultery, pronouncing him an adulterer in marrying a woman divorced from her husband, that he might load him with the more impiety in marrying a woman divorced, not less by death than by divorce, and the wife of a brother who had a daughter by her, and therefore unlawfully united with him, from the instinct of passion, rather than the instruction of the law[z].

The portion of this passage which is most favourable to the received doctrine of divorce for adultery will admit a different interpretation, an interpretation more agreeable to the usual sentiment and language of Tertullian, and to the question proposed by Hermas, whose translator, if not himself, was probably a contemporary writer. But even in its ordinary apprehension the passage is not an unequivocal testimony in favour of the popular doctrine, in

[z] Adv. Marcion, l. iv. s. 34.

support of which it must be wrested to a sense remote from the common use of Tertullian, and in any case it involves a very singular exposition of the Mosaic law of divorce. If adultery had been the ground of a just divorce, as it is the effect of marriage after divorce, or of divorce concerted with a view to another marriage, there could have been no difficulty in supplying the condition from the Gospel of Saint Matthew: nor does adultery alone without the addition of incest satisfy the supposed aim and object of the discourse, which, according to Tertullian, was the censure of the adulterous incest of Herod. Christ, in permitting divorce, did not suffer marriage to be held with a stain: Except for the cause of fornication not even does the Creator separate what he has indeed joined together. The stain, under which marriage may not be held, is equivalent to the fornication for which God separates the parties whom he has united. It is not impossible that there may be a redundance in this difficult sentence, by the application of which the sense may be expressed in these propositions: God does not separate those whom he has joined together: if there be fornication he does separate them: therefore if there be fornication he has not joined them together; and in the want of this divine consolidation there is a stain upon marriage, under which it should not be maintained. This would be the case of all unlawful marriage, and, in Tertullian's view, of all second marriages and marriages after divorce, which should therefore be dissolved. In a case of violation God joins the parties by the express commandment of his word, and therefore their marriage is indissoluble.

Whatever be the cause which justifies divorce, it is one without which marriage is not dissolved, and adultery would follow the marriage of a woman divorced.

In another passage Tertullian denies more unequivocally the licence of marriage after even lawful and allowed divorce; referring to the doctrine of the apostle, who, in restraining the separation of the believer from the unbeliever, would substitute, for their interrupted union, either perpetual widowhood or peaceful reconciliation; according to the Lord's precept against adultery, (understanding that precept not of the cause but of the effect of divorce:) Whosoever shall put away his wife, except for adultery, causes her to commit adultery; and whosoever marrieth a woman divorced committeth adultery[a]. Again he speaks of the service which patience renders to the penitence which is wont to come to the relief of the sinful, when marriage being separated for that only cause, for which it is lawful for the man or the woman to be maintained in constant widowhood, patience waits, desires, intreats the penitence of those who shall enter into salvation. What advantage does she then confer upon both, making the one not an adulterer, improving the other[b]?

In whatever sense Tertullian understands the clause of exception, it is certain that he considers it to contain the one only cause of separation; of separation which should be passed in widowhood, or terminated in reconciliation. This rule he applies to the state of separation of a believer from an unbe-

[a] De Pudicit. s. 16. [b] De Patient. s. 12.

liever; and it is just therefore to infer, that he considers religious apostacy to be the ground of separation, especially as in bringing forward what he calls the precept against adultery, he argues chiefly from the contingent effect of the divorce. It may be useful here to consider the necessity which he maintains of restricting the marriage of Christians to the Christian body, which is the subject of his second Treatise *Ad Uxorem*. He there affirms, that the sanction which the apostle gave to heathen marriages was restricted to marriages already contracted before the conversion of the parties, which were sanctioned, because we are called in peace, and because the continuance of the union might be the means of gaining the unbeliever. If the apostle had meant to sanction the marriage of a believer with an unbeliever, he would have made the licence general, and not have required the widow to marry only in the Lord; a clause, as he remarks, of pregnant brevity. He then sets forth the evil of these marriages; the contamination of the holy flesh with Gentile or alien flesh; the guilt of incest (*stupri*, πορνειας,) incurred in these marriages; the heinous injury to the Lord, and the violation of his temple; the practical evils of the alien corrupting the Christian; the difference of their occupations; the reluctance of the alien to allow his Christian wife to participate in the sacred rites; and the obligation imposed upon the Christian wife to participate in the ceremonies of her heathen husband. He asks, therefore, whether they who are judges of the divine sentiments, who are most constant in adhering to the Lord and to his discipline, are not justified in

interdicting the servants of Christ from alien marriages, that they may not wander in lasciviousness, that they may not desert their duty, nor betray the Lord to strangers? Shall they not be reclaimed to their proper service, who after the publication of their own masters, retain familiarity with the slaves of another master? Or shall earthly discipline be more rigorous than heavenly precepts? Shall the women who marry heathen slaves forfeit their liberty, and Christian women join to themselves the servants of the devil, and maintain their proper rank? In anticipation of the objection, that this is not the interdict of the Lord by his apostle, Tertullian insists; I can conceive no cause of this fatuity, but inconstancy of faith, always prone to secular indulgence. In this exhibition of the guilt and danger of heathen marriages, and in obviating an objection founded on the supposed contrast, of the sanction of a marriage contracted between two unbelievers before their conversion, and the prohibition of marriage between a believer and an unbeliever; that he alleges first, and before every thing else, the authority of our Lord; rather affirming that marriage is not contracted, than that it is entirely dissolved: lastly he forbids divorce, except for fornication; but he commends continence. It is most consistent with the immediate argument of Tertullian, and with his frequent reference to the word translated fornication throughout this treatise, to understand this difficult passage, *dominum magis ratum habere matrimonium non contrahi, quam omnino disjungi*, with the subjoined citation of the clause of exception, of the invalidity of alien marriages, and of the indisso-

lubility of other marriages, and the unlawfulness of marriage after divorce. Tertullian held the marriage with aliens to be interdicted and null, destitute of the protection of divine grace, conciliated by the evil one, condemned by the Lord, and therefore incapable of any prosperous issue. It was on the ground of their nullity that he permitted the Christian widow, after the decease of her heathen husband, to marry any Christian whom she pleased; a privilege, which as a monogamist he could not concede upon any other principle, or without opposing his general doctrine, that the validity of the previous marriage would imply adultery in any succeeding marriage.

The difficulties and embarrassments of Tertullian's argument are increased, not only by the general abstruseness of his style, his extraordinary latinity, and his peculiar modes both of thought and of expression, but by the variety and the ambiguity of the words which he uses to represent the πορνεια of the Scriptures, some of which, in their ordinary sense, unquestionably mean adultery; and all of which he applies upon occasion to denote the incest and offence of alien marriages. With whatever errors the doctrine may have been mingled, it is not and cannot be denied, that he held the indissolubility of marriage in its widest extent; maintaining the continuance of the obligation after death and after divorce, or at least, the necessity of remaining unmarried, and in a capacity of reconciliation and reunion, with the only exception of the Christian widow of a heathen husband: and however the general indissolubility of marriage may have been

called the primitive error of Christianity, it was an error in which Tertullian was consistent with himself, and which, detached from its extravagance and excess, was held by him in common with other contemporary and preceding writers, and was founded on the basis of scriptural authority. Tertullian wrote in an age in which there had not been time for the corruption of apostolical traditions; in which the apostolical language had not fallen into disuse with the neglect of primitive customs, institutions, and discipline; in which the mass of forgeries, which disgraced the succeeding age, was unknown, and the governors of the Church had not adopted a pliant flexibility and accommodation to the manners and maxims of the time[c]. The doctrine of the indissolubility of marriage did not perish with Tertullian; and it required the lapse of another century before the dissolubility of marriage upon divorce was positively asserted.

Cyprian, the immediate follower of Tertullian in the African Church, attributed to the long continuance of peace that the faithful prostituted the members of Christ to the heathen[d], with whom he asserts, in a distinct proposition, that marriage ought not to be contracted[e]. In respect of divorce, he held the doctrine and language of the apostle, that the wife should not depart from her husband; or if she departed should remain unmarried[f]. The author of the Treatise *De Singularitate Clericorum*, annexed to the works of Cyprian, affirms, that our Lord

[c] See Dodwell, s. 46. [d] Lib. de Lapsis. [e] Lib. Test. iii. s. 62. [f] Ibid. s. 90.

foresaw the heresy which would take away marriage, and contrary to the principles of nature and to the Gospel, labour to separate what God hath joined together[g]; and he speaks with the utmost indignation of men who were willing to put away their Christian wives, that they might live with alien women[h].

The practice proves a growing degeneracy from the primitive rule and institution: but it is alleged, that the doctrine of the indissolubility of marriage was the doctrine of the Western rather than of the Eastern Church; and it is therefore important to observe the progress of the doctrine in the writings of the Greek Fathers, and to resume the examination of their opinions, with no other remark than that their acquaintance with the best models of the Greek language may have led them to overlook or to misapprehend the Hellenistic sense of one of the principal words in dispute. The difficulties of the case are not increased more than might be naturally expected under the circumstances.

The authorities of the heretic Ptolemæus, and of the fathers Athenagoras and Theophilus have been already recited.

Clemens of Alexandria was called to vindicate marriage from the pretensions of such as called it fornication and the tradition of the devil[i]: and in this vindication he recites the clause of exception, with strict attention indeed to the sacred narrative and to the doctrine which it involves, but without

[g] Sect. 25. [h] Sect. 32. [i] Strom. l. iii. s. 6.

any commentary, besides the suggestion, that the remark of the disciples; If the case of a man with his wife be so, it is not good to marry; was put interrogatively, with the intention of ascertaining if a man whose wife was convicted of fornication was permitted to marry another[k]. This opinion could not have been entertained but under a very partial conviction that the rule of our Lord, even with the clause of exception, was decisive of the question; and if it had not been doubtful whether fornication, in the sense of adultery, was a dissolution of the marriage. Again; he says, that our Lord renewing the old law did not permit polygamy, but introduced monogamy; and if the apostle permissively allows any man for his incontinence to partake of a second marriage, such a man does not offend against any covenant, for there is no prohibition of second marriages in the law; but he does not fulfil the high perfection of the administration of the Gospel; and that man purchases heavenly glory to himself, who remains single, and preserves without contamination the marriage which death has dissolved, and willingly yields to the dispensation under which he may follow the service of the Lord without distraction[l]. In the same spirit he proceeds to argue, that it is for the admonition and restraint of such as are prone to second marriages that the apostle speaks earnestly and harmoniously: He that committeth fornication sinneth against his own body: and, reverting to the heretical expression which designated marriage as fornication, he observes, that as the name of fornica-

[k] Strom. l. iii. s. 12. [l] Ibid.

tion is given to avarice, which is opposed to contentment, and to idolatry, which is the distribution of one God into many, it is also appropriated to the declension from one marriage to more: for in these three cases does the apostle use the terms fornication and adultery. The opinions of Clemens are however most decisively expressed in the conclusion of his positive discourse of marriage: In proof that the Scripture recommends marriage, and does not permit a man to separate himself from marriage, Christ plainly proposes the law; Thou shalt not put away thy wife, except it be for the cause of fornication; and he pronounces it to be adultery if any man adds to his marriage during the life of either of the parties that are separated, (το επιγημαι ζωντος θατερου των κεχωρισμενων.) . . . He says also, Whosoever receives a woman divorced commits adultery: for if any man divorces his wife he commits adultery to her, i. e. he compels her to commit adultery; and not only is he who divorces her the cause of this, but he also who receives her, in affording occasion of offence to the woman, for if he did not receive her, she would return to her husband[m]. It is hardly possible to conceive a clearer or more striking view of the indissolubility of marriage, or of the restrictions upon divorce even for adultery.

Appeal may be made to Origen, as evidence of the doctrine and of the decay of the doctrine. He comments at considerable length on the conference of our Lord with the pharisees, whose question he supposes to have been put with the intention of

[m] Strom. l. ii. ad fin.

drawing our Lord into a dilemma of either permitting divorce for every cause, or of permitting cohabitation after offence, which he is supposed to have avoided, by denying divorce for every cause; by referring to the bill of divorce, and arguing the necessity of men's bearing with the infirmity of their wives; by pressing the Jews with the authority of the Mosaic writings; and by his own authoritative prescription, What God hath joined together, let not man put asunder. Origen, with other writers of the age, affirmed, that the Jewish law of divorce proceeded on the private authority of Moses, which as a divine legislator he was competent to exercise; and he is scrupulous in obviating any exceptions which might be raised from the separation of the Jewish Church from the Lord. In answer to the assumed objections of a Jew, pretending that Christ allowed divorce as freely as Moses, and that the cause of fornication in the Gospel was equivalent to the uncleanness in the Law, he maintains, that adultery under the Law was a capital offence, and could not therefore be equivalent to uncleanness, which was only a cause of divorce, and that our Saviour allows divorce for no other offence than fornication found in the woman. This is a singular interpretation, but it shews that in Origen's judgment the clause of exception was limited to the texts in which it is expressed; and it might have been thought to decide the point, that in the same judgment adultery was the one and only cause of divorce: but it was worthy of the versatility of Origen to suggest the enquiry, whether divorce might not be permitted for other causes than fornication; as, for

example, sorcery, murder of the children during the husband's absence, murder of any kind, plunder of the husband's house; if such offences should be committed without fornication. On the one side he argued the unreasonableness of bearing with offences worse than adultery; and on the other the impiety of transgressing the doctrine of the Lord. He further remarks, that the Lord's words are not, Let no man put away his wife; but, If a man put away his wife he causes her to commit adultery, which as far as depends upon him he does, when he dismisses her without being guilty of adultery; when he gives her occasion of second marriage; when he permits her to do what she will, and to associate with whom she pleases; and when he separates himself from her company; and in the latter case he is perhaps more blameable than the man who divorces his wife, who is innocent of adultery indeed, but guilty of sorcery, murder, and other grievous offences. The woman would be an adulteress, however she might affect to be married to another man during the life of her former husband; and the man who takes a woman divorced does not marry her, for, according to the doctrine of our Lord, he does but commit adultery[n].

Thus does Origen maintain the limitation of the clause of exception, and assert the indissolubility of marriage, by imputing adultery to the marriage of a woman divorced for whatever cause. Origen was however no monogamist; on the death of either consort he freely permitted the marriage of the sur-

[n] Com. in Matt. tom. xiv. s. 16—25.

vivor. He rather palliated than excused the practice, which was then in its origin, of marrying during the life of the consort; and, alluding to certain governors of the Church, who, beyond the authority of the Scriptures, suffered a woman to marry while her former husband was living, he held that the practice was contrary to the Scripture, which saith, A woman is bound by the law to her husband, so long as he lives; and she shall be called an adulteress, if while her husband liveth she be married to another man: but he nevertheless conceived that the permission was not altogether unreasonable, for perhaps it was a concession to the infirmity of incontinent men; and on a comparison of evils, what was not good was tolerated, that what was worse might be avoided, although the practice was in itself contrary to what was originally written[o].

The indissolubility of marriage was from the earliest period a settled principle of canonical law, in which it was held, that marriage, rightly contracted, cannot be dissolved, for the parties who are joined together by God, cannot be and ought not to be separated by man[p]. This is the point which it is the main purpose of these pages to establish on the basis of scriptural authority, illustrated by catholic practice and tradition. There is but little value in the decretal Epistle ascribed to the pope Evaristus, (A. D. 110.) in which it is maintained that matrimony cannot be dissolved: but there are other and authentic Canons which speak the same language.

[o] Comm. ad Rom. l. vi. s. 7.

[p] Instit. Jur. Canon. l. ii. tit. 16. in Fergusson.

The first council of Arles (A.D. 314.) decreed, that husbands who should detect their wives in adultery, and who should be young men and believers, and be forbidden to marry, should be advised, as far as possible, not to take other women during the life of their wives, notwithstanding their adultery. In the council of Eliberis, about the same period, the communion was to be refused to a woman who should leave her husband without cause, and marry another: if a Christian woman should leave her Christian husband, although he were an adulterer, she was forbidden to marry another; and if she did marry another, the communion was to be refused until after the death of her former husband, or only to be given in imminent danger of death: the communion was also refused to a Christian woman who should marry a man that had left his wife, without fault on her part, and should not leave him when she knew that he was the husband of a blameless woman. The Canon of the council of Neocæsarea relates only to the clergy, and ordains, that if the wife of a laic be convicted of adultery, the man shall not be admitted into the order of the clergy; if he be ordained, it is convenient that he divorce his wife; and if he continue to live with her, he shall not obtain the ministry committed to him. The Canon of the council of Gangres (A. D. 325.) was against divorce: If a woman, leaving her proper husband, desire to depart in hatred of marriage, let her be anathema[q].

There is the same current of tradition for the in-

[q] Labbe Concilia: quoted by Selden, Bingham, and Fergusson.

terdiction and dissolubility of heathen marriages. There is extant a decree, bearing the name of Eutychianus the pope, (A. D. 280.) that if a heathen, before his baptism, should have dismissed his heathen wife, he was free, after his baptism, to have or not to have her; and in justification of the doctrine, an appeal is made to the words of the apostle: If the unbelieving depart, let him depart[r]. It is certain, that the attention of the Church was at the same time employed in the prevention of these marriages. Thus, in the first council of Arles, Christian virgins were forbidden to marry heathens, under pain of being separated from the communion for a time: and the council of Eliberis delivered a canon to the same effect, ordering parents who should consent to these marriages to be separated from the communion for five years; and even in the hour of death, if the marriage was contracted with an idolatrous priest[s]. Thus the body of the Church declared its concurrence in the private opinions of the fathers; of Cyprian, asserting that marriage should not be contracted with the heathen; and of Tertullian, declaring that the law of the Creator every where prohibited marriage with men of other tribes; and all drew their doctrine from the fountains of apostolical and divine authority.

The opinions of this period have been collected with the more labour, and detailed with a minuteness and a "prolixity too much tedious," because they have been depreciated or overlooked by the

[r] Ux. Ebr. l. iii. c. 31. [s] Bingham, b. xxii. c. 2. s. 1. See above, vol. i. p. 248.

principal writers on divorce, and because they afford the best evidence of the primitive doctrine, with strong confirmation of the expositions and arguments of Scripture which have been proposed. The canonical rules, which were issued in the conclusion of this period, and the incidental remarks of the fathers, which have been recited, betray the degeneracy of the Christian practice, both in respect of marriages after divorce, and of marriages with the heathen; the latter of which the governors of the Church, both in synodal and private admonitions, endeavoured to restrain; and of the former of which, however they might allow the practice, they asserted the doctrine to be a deviation from the sacred rule. Throughout the whole period there is plain evidence of the prohibition and disallowance of alien marriages, and of the indissolubility of marriage, which in the earliest ages was carried to the extravagant excess of extending its obligations beyond the grave. Divorce was now held to be merely a permitted state of separation, to be kept in singleness, in a preparation for reunion, without a privilege of entering into a new marriage, which was conceived to be inseparable from the imputation of adultery. In respect of the clause of exception it may be observed that it was not often recited; that when it was recited it was often passed without comment, and without being made the ground of any specific argument; that it was scrupulously restricted to the texts of Saint Matthew's Gospel, and never attached to the other Gospels, or allowed to limit the indissolubility of marriage generally asserted in those Gospels; and that it was perplexed by inappropriate,

inadequate, and indefinite versions, which at once prove and enhance the difficulty of ascertaining its original signification, and some of which may have led to the ultimate misapprehension of the term, while others afford the means of recovering the primitive interpretation, especially evinced in the writings of Tertullian and the translator of Hermas, the latter of whom uses it for idolatrous apostacy, and the former applies the original term to signify incest, the incest committed in second marriages, and in marriages with the heathen. If the doctrine of divorce for adultery could be fastened upon this primitive period, it was a divorce very different from that maintained, approved, and recommended, by the writers of a later age; it was a divorce, of which there was a bare permission, no encouragement; a divorce which anticipated the reconciliation of the parties, and in which nothing was thought of the dissolution of marriage. That doctrine was first asserted by Lactantius, whose words will form a suitable conclusion to the evidence of the state of divorce before the time of Constantine: That no man may think of circumscribing the divine precepts, it is added, for the removal of all imputation and occasion of fraud, that the guilt of adultery is upon him who marries a woman divorced from a husband, and upon him who divorces his wife, except for the cause of adultery, that he may marry another, for God is not willing that the body should be separated and torn asunder[t]. And as the woman is engaged by the bond of chastity not to desire

[t] Div. Inst. l. vi. c. 22.

another man, the husband is held by the same law, since God hath consolidated the man and the woman in the structure of one body. Therefore he hath commanded that the wife shall not be divorced, except she be convicted of the crime of adultery, that the bond of the covenant of marriage, which infidelity has not broken, may never be dissolved[u].

The second period proposed for consideration is the interval of two hundred years, from Constantine (A. D. 325.) to Justinian (A. D. 530.)

In this period very considerable alterations were introduced into the law and licence of divorce, of which the causes were multiplied almost indefinitely. The relaxed discipline of the Church attested by Origen; the equivocal censure which he passed upon that relaxation; the doubts which he himself suggested; and the positive assertion of Lactantius, all agreed in preparing the way for these innovations, and for the accommodation of the divine rule to the secular practice. Constantine, at once restricting the Roman licence, and enlarging the Christian law, allowed to each sex three causes of divorce: "The man was at liberty to give a bill of divorce to his wife, if she was either an adulteress, a sorceress, or a bawd: and the woman on the other hand might give a bill of divorce to her husband, if he was a murderer, a sorcerer, or a robber of graves; but for being a drunkard, a gamester, or a fornicator, she had no power against him[x]." This inequality between the man and the woman, which marks all human reasoning and legislation on the subject of

[u] Epit. c. 66.

[x] Bingham, b. xxii. c. 5. s. 3.

divorce, and by which, under the law of Constantine, the man might divorce his wife for adultery, for which he himself could not be divorced, was a fatal proof of the rapid progress of error, adopted both in the singularity of the new restrictions, and in the extension of the grounds of divorce beyond all connexion with matrimonial impurity, from the loose suggestions of Origen, and in direct opposition to the simplicity, and to the impartial equity, of the Christian rule. The ancient writers shewed that the new provisions were an innovation even upon the Roman law, although that law had allowed the divorce of women for trivial causes[y]. Lactantius had pointed out a further distinction: The Christian scheme, he said, is not that of the public law, under which adultery is imputed only to the woman, if she has more than one husband; but the husband, if he has more than one wife, is free from the charge. The divine law has joined the two in marriage, which is one body with such equal rights, that adultery is the fault of that party who shall first divide the structure of the body into different parts[z].

Honorius added to the law of Constantine, allowing to men free liberty to divorce their wives for great causes, without forfeiture of espousal gifts or dowry; and on divorces for inferior offences he imposed no penalty or restriction except the forfeiture of the woman's dower, and a restriction from marriage for two years[a]. This limitation was a direct assertion of the Roman dissolubility of marriage; and the penalties were such as few men would

[y] Bingham, b. xxii. c. 5. s. 3.
[z] Div. Instit. l. vi. c. 23.
[a] Bingham, b. xxii. c. 5. s. 4.

scruple to incur, or suffer to interfere with their passions, their caprices, and desires of divorce.

Theodosius the Younger repealed the laws of Constantine and Honorius, and restored the ancient freedom of divorce, abolishing at once the restrictions of Constantine and the penalties of Honorius. This restoration of the ancient licence of paganism, allowing divorce for any cause whatever, naturally gave offence, and the emperor, revoking his own constitution, published (A. D. 449.) a new law, specifying the several causes for which divorce might be obtained, and which in their multiplicity and variety exhibited but the fewest and the faintest shadows of the primitive permission. "If any woman found her husband to be an adulterer, or a murderer, or a sorcerer; or attempting any thing against the government; or guilty of perjury; or could prove him a robber of graves, or a robber of churches; or guilty of robbery upon the high-way; or a receiver or encourager of robbers; or guilty of plagiary or man-stealing; or that he associated openly in her sight with lewd women; or that he insidiously made attempts upon her life by poison, sword, or in any other way; or that he vexed her with stripes, contrary to the dignity of free-born women: in all these cases she had liberty to right herself by a bill of divorce, and make her separation good against him by the law. In like manner, if the husband could prove his wife to be an adulteress, or a sorceress, or a murderer, or a plagiary, or a robber of graves, or a robber of churches, or a harbourer of robbers; or that she feasted with strangers against his knowledge or his will; or that she lodged

out all night, without any just or probable cause, against his consent; or that she frequented the games of the circus, or the theatre, or the place where the gladiators or fencers used to fight, against his prohibition; or that she made attempts upon his life by poison, or sword, or in any other way; or was partaker with any that conspired against the government; or guilty of any false witness or perjury; or laid bold hands on her husband: in all these cases the man had equal liberty to give his wife a bill of divorce, and make his action good against her at law. But if the woman divorced herself without any of the foresaid reasons, she was to forfeit her dowry and espousal gifts, and to remain five years without marrying again, and if she pretended to marry again within that time, she was to be reputed infamous, and her marriage to be reckoned as nothing. But if she rightly proved her cause, she was to recover her dowry and antenuptial gifts, and had liberty to marry again within a year: and if the man proved his action against the woman, he might retain her dowry and espousal gifts, and marry again as soon as he pleased[b]."

The principal innovations in this rescript are the multiplication of the causes of divorce beyond the remotest connexion with matrimonial offences, and the free permission to the parties divorced for causes not permitted in the law of Christ to marry again, without the faintest reference to the adultery which the Gospel declares to be the consequence of such marriages.

[b] Bingham, b. xxii. c. 5. s. 5.

Valentinian III. abolished the old Roman custom, which had again crept in, of making divorces for no other cause than the mutual pleasure of the parties, and restored the law of Constantine. Anastasius (A. D. 497.) rescinded the law of Valentinian, and while he commended the last constitution of the Younger Theodosius, deprived it of the little force which it possessed, by readmitting the validity of divorces by mutual consent, without requiring the allegation of any of the causes specified in the law of Theodosius, and by permitting to the woman divorced the privilege of marrying at the expiration of one instead of five years[c].

It is natural to observe the proof which these imperial edicts afford of the danger of admitting a law of divorce, and of the facility with which it may be abused. It was abused among the Jews; it was abused in the rising and the falling empire, until it lost all dependence on the law of the Gospel. It is doubtful how far these imperial edicts met with the concurrence of the hierarchy: Selden affirms the assent of the fathers to the first innovations, which Bingham sees reason to dispute. The fathers at this period were more occupied in recommending the monastic life, than in upholding the true law of marriage and divorce: the primitive interpretations were falling into disuse, and it would seem from the passages which are brought forward by the writers on divorce, that the governors of the Church were incapable of opposing the imperial will, and that they not only adopted a new language in speaking

[c] Bingham, b. xxii. c. 5. s. 6, 7.

of the privilege and duty of divorce, but were divided in opinion on the main questions of the dissolubility of marriage, and the force of the clause of exception.

Hilary, the earliest writer of this period, restricted the cause of divorce: As the Law conferred upon the husband the power of giving a bill of divorce, the faith of the Gospel not only enjoins the desire of peace, but throws upon him the guilt of forcing his wife to commit adultery, if, from the necessity of leaving him, she is put into a condition of marrying another man; prescribing no other cause of quitting the conjugal relation besides the contamination of the husband by the society of a prostituted wife[d].

Ambrose, in an express comment upon the words of Saint Luke, maintains; If marriage is of God, it is not lawful that marriage should be dissolved: be unwilling therefore to dismiss thy wife, lest thou deny God to be the author of thy marriage. It has been remarked[e], that he mentions not a word of our Lord's exception; but is it certain that he does not allude to it in affirming the indissolubility of the marriage which is of God, and in insinuating the dissolubility of the marriage which is not of God, (which is nothing but πορνεια.) And, if this supposition be rejected, is it not reasonable to believe, that Ambrose did not think it necessary to supply from Saint Matthew the deficiencies of Saint Luke; that he considered the rule of Saint Luke to be general, and not requiring the limitation of the clause of exception, especially as he goes on to speak of

[d] Comm. in Matt. v. 32. [e] Chr. Remembr. vol. ii. p. 745.

divorce for insufficient causes, in opposition probably to the practice which the new laws were introducing: You dismiss your wife without crime, as if you acted lawfully in dismissing her: and you think it lawful for you to do that which the law of man does not forbid, but which the law of God nevertheless forbids. Upon the text of the apostle; If the unbeliever depart, let him depart; he, or the writer who assumes his name, remarks; The apostle at the same time denies it to be of divine authority that marriage of any kind should be dissolved, nor does he advise the dissolution, or give authority of deserting the consort, but he takes away the blame from the party deserted. It is again[f] objected, that the apostle positively determines that a brother or sister is not under bondage in such cases; and hence it might be inferred, that the commentator must have misunderstood the apostle, or must have allowed the dissolution of the marriage in question: but it has been shewn, that the release from bondage does not imply a licence of remarriage during the life of the deserting party, and that the apostle only allows the woman to marry if her husband be dead. The same commentator appears to have given a singular preference to the man, which he justifies by the weakest argument, by argument evidently accommodated to the existing law: allowing a husband divorcing a guilty wife to marry another; but not allowing the wife to marry after dismissing her husband for fornication; for the woman is the inferior, and the man has the more power, and is the head of the woman[g].

[f] Chr. Remembr. vol. ii. p. 745. [g] Ibid.

With allusion to the separation of the foreign wives under Ezra, and the liberty of the Jews to marry women of their own stock, he contradicts himself, and contends, that much more shall the wife, if her infidel husband deserts her, have free liberty to marry if she will to a husband of her own religion. There is no offence, if the husband is dismissed for the sake of God, in marrying another, for the indignity offered to the Creator dissolves the obligation of marriage with respect to the party deserted[h].

Jerome maintains that fornication is the only cause of divorce, and, although he makes divorce upon that ground to be a duty, he allows it to be dangerous to marry after divorce, which he, with Tertullian, conceives to be lawful only upon the condition of not marrying again: It is fornication alone which can overcome the love of a wife. When she divides one flesh into another, and by fornication separates herself from her husband, she ought not to be retained, lest she bring her husband also under the judgment of the Scripture which saith, Whoso holds an adulteress is a foolish and wicked man. But as reproach may fall upon an innocent woman, and guilt may redound to a second marriage from the continuance of the first, the man is commanded to dismiss his first wife on the condition of not taking a second during her life. For the plea is this: if dismissing the first wife, not for lust, but unjustly, why, having experienced the unhappiness of a former marriage, do you expose yourself to the danger of a second? And, because it may happen

[h] Bingham, b. xxii. c. 2. s. 12.

under the same law that the wife may give a bill of divorce to her husband, the man is instructed under the same caution that in marrying such a woman he incurs the guilt of adultery[i]. The last words imply that Jerome understood the text without the clause of exception, or that he supposed it unlawful to marry a woman divorcing herself from her husband even on the plea of adultery. He also records the instance of a woman doing public penance in the Church for marrying a second husband after she had divorced herself from the first upon the account of his adultery and other abominable practices. This is to be considered of a voluntary act of the woman, and not of any public censure of the Church, which at that time did not punish or dissolve such marriages, but dissuade men from entering into them during the life of the consort divorced, and exhort them to repent of such engagements, as offences prohibited by the apostle: and Jerome himself speaks with his usual vehemence of a woman who had so married a second husband, that she was an adulteress for so doing, and ought not to receive the communion till she repented of her crime[k].

The opinions of Augustin were not only unsettled, and even contradictory, but he acknowledged the difficulty of deciding the lawfulness of marrying after divorce for adultery: Whosoever shall detect his wife in adultery, and divorce her, and marry another, is certainly not to be compared with such as without the plea of adultery divorce their wives and marry

[i] Chr. Remembr. vol. ii. p. 745.

[k] Bingham, b. xxii. c. 2. s. 12.

others: and in the divine Scriptures the point is so obscure, whether he, who without doubt may divorce an adulterous wife, may also marry another, that, as far as I can judge, any man may on that point err without offence. And therefore he concludes that all that the ministry has to do in this case is only to persuade men not to engage in such marriages; but if they will marry, notwithstanding the contrary advice which is given them, he will not venture to say that such men ought therefore to be kept out of the Church. Saint Austin was fully persuaded in his own mind that such marriages after divorce were unlawful; for he often repeats it in his works, and uses what arguments he could to dissuade men from them, not scrupling to declare his opinion of them, as suspicious and doubtful marriages that might stand charged with adultery: but then he no where intimates that the Church either did or ought to treat persons so marrying, as she did other adulterers, whose adultery was more indisputable, either by dissolving the marriage, or bringing the persons under excommunication and public penance in the Church. But rather declares the error of such persons to be venial, because it was not so expressly condemned in Scripture[1].

On the clause of exception the judgment of Augustin was most undecided; at one time departing not entirely from the original exposition, and at another accommodated to the imperial innovations. Thus he held idolatry, and other offences equal to fornication, to be just causes of divorce: but he

[1] Bingham, b. xxii. c. 2. s. 12.

admitted the extent of fornication to be an intricate question, in which the only indisputable point was, that proper fornication was a cause of divorce. By a kind of logical sorites he admits many other grounds of divorce, under the name of fornication. "Idolatry, which the infidels follow, and all other noxious superstition, is fornication; and the Lord permitted the wife to be put away for the cause of fornication." Hence he proceeds to argue, that if infidelity be fornication, and idolatry be infidelity, and covetousness be idolatry, there is no doubt to be made that covetousness is also fornication: and from hence he concludes, that for unlawful lusts, not only such as are committed by carnal uncleanness with other men or women, but also for any other lusts which make the soul, by the ill use of the body, to go astray from the law of God, and perniciously and abominably corrupt it, a man may without crime put away his wife, and a wife her husband; because the Lord excepted the cause of fornication, which we are compelled to take in the most general and universal sense. The fallacy of this opinion was obvious, and Augustin eventually retracted it, and fell into the received opinion of the age, which made adultery the ground of divorce[m].

But in all their uncertainty and inconsistency the writers of the Latin Church in this period are so far from raising any doubts on the indissolubility of marriage, from superseding the more decided testimonies of the ancient writers, or from betraying a servile deference to the imperial will, that it is ad-

[m] Bingham, b. xxii. c. 5. s. 2.

mitted that the doctrine was maintained in the Western Church, and only rejected by the Greeks and Armenians, whose authority it is again necessary to take into consideration.

Epiphanius affirms, that when a person is not able to be satisfied with one wife who is deceased, or when a separation is made on the ground of fornication or adultery, or some evil plea, the divine word does not condemn the man who is joined to a second wife, or the woman who is joined to a second husband, or exclude them from the Church and from eternal life, but tolerates their infirmity; not however allowing the man to have at the same time two wives (or a second wife) while the first is still surviving; but if, being separated from the first, he happens to be joined to another lawful wife, the holy word and the holy Church of God pities him, especially if in other respects he be pious, and behaves himself according to the law of God[n]. In this rule adultery is expressly added to fornication, either exegetically or cumulatively; and the term of any evil plea (κακης αιτιας) multiplies the causes of divorce, without any corresponding sanction of divine authority. A second marriage after death is a privilege grounded in the Scripture; but in respect of the marriage after divorce, of which it has been said that the liberty is given to both[o] the husband and the wife; it was under the most partial quotation of the words merely not condemned, it was tolerated as an infirmity: and is not the privilege of second marriage

[n] Adv. Hæres. 59. n. 4. Bingham, Beza. [o] Chr. Remembr. vol. ii. p. 745. Bingham, b. xxii. c. 2. s. 12.

restricted by the context exclusively to a state of widowhood, prohibiting a second marriage while the former partner, separated by divorce, was living; allowing and tolerating with compassion the infirmity of a second marriage, contracted after the decease of the first consort? It was the offence of the Ebionites, on the testimony of the same Epiphanius, that they indulged in second, third, and even seventh marriages; and it was an age in which some relaxation was made from the rigour of the ecclesiastical discipline, in accommodation to the civil law[p].

Basil the Great, before the Theodosian law, maintained the equal rights of men and women in respect of divorce, which he restricted to adultery, complaining at the same time of the opposite practice, and pronouncing such as married after divorce to be guilty of adultery[q].

Gregory of Nazianzum, in the spirit of a monastic, calls a wife an acquired evil; but he does not allow that acquired evil to be put away (ουδ' αποπεμπτον.) He complains also that divorce is contrary to the Christian laws, however the Romans might think otherwise[r].

Chrysostom holds that adultery is the only cause of divorce, and that all other crimes are to be borne[s].

Asterius Amasenus says, What God hath joined together let no man put asunder. Hear this, ye hucksters, who change your wives as you do your clothes; who build new bride-chambers as often

[p] Coteler. Not. ad Herm. Pastor. [q] Ux. Ebr. l. iii. c. 32.
[r] Ibid. [s] Bingham, b. xxii. c. 5. s. 10.

and as easily as ye build shops at fairs; who marry the portion and the goods, and make wives a mere gain and merchandize; who for any little offence presently write a bill of divorce; who leave many widows alive at once: know of a surety, that marriage cannot be dissolved by any other cause but death only or adultery[t]. He uses the word properly denoting adultery: the original word had probably fallen into disuse.

The Apostolical Canons, whether they are referred, as by Selden, to the age before Constantine, or taken as evidence, according to Mosheim, of the state and discipline of the Greek and Oriental Churches in the second and third centuries, contain no distinct allusion to divorce for adultery. Canon XL. If a layman divorces his wife, and marries another, or marries a wife divorced by another, let him be separated (from the Church.) This is no more than the sentence of our Lord, without the clause of exception, enforced by a sentence of exclusion: and it is a gratuitous comment of the Jurists, that the woman must be supposed to be divorced without cause, reason, or law. Canon XIV. He that taketh a widow, or a divorced woman, or a concubine, or a servant, cannot be a bishop. The rule is evidently taken from the Mosaic law; and applied to the clergy as models of Christian purity, it prohibits the marriage of women divorced; but nothing is said of the grounds upon which the woman is divorced; and it would be gratuitous to restrict the general comprehensiveness of the interdict. Canon XLII.

[t] Bingham, b. xxii. c. 5. s. 1.

If any bishop, presbyter, or deacon abstain from marriage, not through temperance, but from abhorrence, he calumniates the divine institution, forgetting that all things are very good, and that God made man male and female. Canon III. Let no bishop, presbyter, or deacon, put away his wife under pretence of piety: if he shall put her away, let him be separated; and if he persist, let him be deposed. Canon LIII. If there be any charge against a believer, of fornication, adultery, or any other forbidden act, and he be convicted, let him not be received among the clergy. Canon LIX. If any man violates a virgin not betrothed, and keeps her, let him be separated: but it is not lawful for him to take another, but let him keep her whom he has chosen, even if she be poor. Another Canon, according to Selden, asserts the nullity of servile marriages (in compliance with the Roman law,) and ordains, that if a man or woman marry in a state of slavery, they shall be excommunicated, or repudiate each other.

The Apostolical Constitutions, another forgery of the third century, asserts with Jerome the necessity of divorce for adultery, to which it restricts the divorce, without adding any licence of remarriage. It is not lawful, after marriage, to put away a wife uncondemned: for he saith, Thou shalt take heed to thy spirit, and shalt not put away the wife of thy youth, for she is the companion of thy life, and the residue of thy spirit, and not another. For the Lord saith, What God hath joined together, let not man put asunder. For a wife is the companion of life, united by God into one body out of two: and

he that again divides the unity into two, is the enemy of the word of God, and the adversary of his providence. In the same manner, he that retaineth an adulteress, is a fool and an impious person: for he saith, Cut her off from thy flesh; for she is not a helpmate, but a traitor, whose mind is turned to another[u]. If any young woman, having lived a short time with her husband, loses him by death, or by any other occasion, and remains by herself, having the gift of widowhood, she shall be found happy[x]. Monogamy is just, being according to the law and to the will of God; but a second marriage, after taking up the Christian profession, is unlawful, being not for conjunction, but in falsehood: a third marriage is a proof of incontinence; and whatever is beyond a third marriage is manifest fornication and indisputable lasciviousness; for in the creation God gave one man to one woman[y].

The evidence of the dissolubility of marriage rests chiefly on the arbitrary edicts of the emperors; and in the four general councils, which were held in this period, nothing was decreed upon the subject of divorce[z], nor any opposition offered to the rescripts

[u] Lib. v. c. 14. [x] Lib. iii. c. 1. [y] Lib. iii. c. 2.

[z] Selden (Ux. Ebr. l. iii. c. 31.) notices in the Arabic copy an addition not known to the Greek and Latin copies of the Canons of the Nicene Council: If a priest or a deacon divorce his wife, for fornication or any other cause, or eject her from his house, that he may change her for one fairer, richer, or better, or for his lust, which is displeasing to God; if she be dismissed for these causes, and he marries another woman, he shall be deposed: if he be a laic, he shall be excommunicated. Selden attaches no authority to the Canon; but it is not unimportant in ascertaining the discipline of the Eastern Churches.

of the soyereigns under whom they were held, and who were now possessed of the pontifical power. In the compilation of the Theodosian code nothing was inserted, except from the synodal rules of the councils of Gangres and Neocæsarea, to the exclusion of those of Arles and Illiberis. The question was not however decided: the fathers of both the Eastern and the Western Churches avouched their opinions, which they asserted without scruple in the provincial councils. In the council of Carthage (A. D. 398.) it was ordained, that a bishop should be punished for ordaining any person whose wife was a widow or a divorced woman, or who had married a second wife. In the council of Mileve, (A. D. 402.) attended by Augustin and several African bishops, it was ruled, that according to the doctrine of the evangelists and apostles, no person divorced, whether man or woman, should marry another; but remain in the state of separation, or be reconciled to each other; and that in the event of their contumacy they should be brought to penance. This rule was admitted into the Canons of the African Church, in the council held (A. D. 415.) and confirmed by two hundred and seventeen African fathers. On both occasions it was proposed to petition for an imperial law to this effect: but nothing was done in furtherance of the proposition, which alone is sufficient to prove the opposition of the fathers to the rule and the practice which now prevailed[a].

In the council of Ireland, held (A. D. 450.) under

[a] Ux. Ebr. l. iii. c. 31. Fergusson, p. 444.

Saint Patrick, Aurelius, and Iserninus, was this Canon: Hear the Lord speaking: He who is joined to an harlot is one body: also, Let the adulteress be stoned; i. e. let her die unto sin, that she may cease to grow, who does not cease to commit adultery. Also, if a woman has committed adultery, does she at all return to her former husband: and it is not lawful for a man to divorce his wife, except for the cause of fornication; as if it had been said, for that cause. Therefore, if a man shall marry, as after the death of a former wife, it is not forbidden[b]. But there is another Canon ascribed to the same Saint Patrick: If a man's wife shall commit fornication with another man, he shall not marry another as long as his first wife shall live. If she repent, he shall receive her, and she shall serve him in the capacity of a servant, and repent on bread and water for a year, and they shall not sleep together[c].

A Canon of the council of Angiers (A. D. 453.) contains this general interdiction: They who under the plea of marriage make use of other men's wives, while their consorts are alive, shall be excluded from the communion of the faithful.

The council at Vannes (A. D. 465.) excepts the cause of fornication thus: They, who leaving their own wives, as is said in the Gospel, except for the cause of fornication, and, without proof of adultery, marry others, shall be excluded from the communion of the faithful; lest faults, overlooked by our indulgence, may entice others into a licence of error.

The council at Agde (A. D. 506.) authorizes

[b] Fergusson, p. 444. [c] Coteler. in Herm. Pastor.

divorce after judgment of the bishop of the diocese[d].

There is also extant a letter of the Pope Syricius, in which it is maintained that a man cannot marry a woman that is betrothed to another, because any violation of the sacerdotal benediction on a woman about to marry is a crime equal to sacrilege: and if the espousals are thus indissoluble, the marriage is also indissoluble. There is also extant a letter of the Pope Innocent (A. D. 405.) concerning such as marry after a divorce, whom he pronounces to be guilty of adultery; arguing, that whosoever hastens to another marriage during the life of his wife cannot be otherwise than an adulterer, inasmuch as the woman with whom he is united appears to be guilty of adultery, as we read in the Gospel; Whosoever shall put away his wife and marry another commits adultery; and he who marries a woman divorced commits adultery. All such should be separated from the communion of the faithful[e]. In another letter the same pope requires of persons ordained after marriage not to divorce their wives, but to live with them in continence. The permission was as just as the restriction was arbitrary: but such was the progress of the celibacy of the clergy.

The prohibition of marriage with unbelievers was during this period enlarged and enforced by civil and ecclesiastical penalties. The councils of Laodicea (A. D. 361.) and of Agde (A. D. 506.) forbade the marriage of the faithful with heretics, except upon the condition that the heretics should forsake

[d] Fergusson, p. 444. [e] Ux. Ebr. l. iii. c. 31.

their error: the third council of Carthage (A. D. 397.) interdicted the marriage of the sons and daughters of the clergy with Gentiles, heretics, and schismatics: and the council of Chalcedon (A. D. 451.) prohibited the marriage of the readers and singers among the inferior clergy with Jews, Gentiles, or heretics, who would not be converted: and, lastly, the second council of Orleans (A. D. 533.) not only forbade the marriage of Christians with Jews, but pronounced such marriages unlawful, and ordered, that if the parties did not separate upon admonition, they should be deprived of all benefit of the communion. The imperial laws sanctioned these interdicts and censures of the Church. Constantine made it a capital offence in a Jew to marry a Christian: and Valentinian and Theodosius, by an edict retained in the Justinian code, made the offence capital in both parties, pronouncing it to be a kind of adultery, and liable to the penalties of adultery, and conveying to any one the office and power of the prosecutor[f].

In this second period of the history of the Christian law and doctrine of divorce, the causes of divorce were multiplied, and the entire dissolution of marriage was introduced. The spirit of Christian obedience was relaxed, and the fathers protested in vain against the licence of the people, supported by the sanctions of the imperial law. They were under obligations to the prince, and in accommodating themselves to his will, or in feebly opposing it, they might plead the more excuse, because they had now lost sight of the original and peculiar idiom of the

[f] Bingham, b. xxii. c. 12. s. 1. See above, vol. i. p. 249.

Scriptures, and were falling into new expositions of sacred truth. They hesitated in their own judgment, and were divided among themselves, hardly agreeing, except in understanding adultery to be the one cause of divorce, in supporting, as far as it was in their power to support, the doctrine of the indissolubility of marriage, and in interdicting marriage with the unbelieving. The difference between the civil and ecclesiastical laws now began silently to introduce the distinction between divorces *a vinculo* and divorces *a mensâ*, not in the sense of the English law, but to denote the entire dissolubility of marriage under the law of the state, in contrast with the mere separation of the adulterer from the innocent consort, without liberty of new marriage to either during the life of the other, under the law of the Church.

The third period in the history of the law of divorce extends from the time of Justinian until the dissolution of the Empire in the East, and the Reformation of the Church in the West.

Justinian (A. D. 528.) confirmed all the provisions of the law of Theodosius, and added new causes and occasions of divorce. He permitted the woman to divorce her husband for imbecility, and to marry after the expiration of two, or as it was afterwards determined of three, years. He permitted the woman to be divorced, if she used means to procure abortion; if she was so lewd and luxurious as to go into a common bath with men; and if she endeavoured to be married to another man while she was already married. At the same time he repealed the laws which allowed divorce by mutual consent and for light or trivial causes, but he was the first to

permit divorce on the pretence of a desire to enter upon the monastic life. He also granted divorce to any person whose consort should be for a long time in captivity; a privilege which was also conceded by the Popes Innocent and Leo the Great[g].

In this interval a body of Canons was collected for the government of the Eastern Church, including the several constitutions and laws which had hitherto been passed on the subject of divorce. To these constitutions were added, about the year 1030, the following Canons of Alexius, the Patriarch of Constantinople: 1. The priest is blameless who pronounces the matrimonial benediction on a woman divorced from her husband by reason of her husband's adultery: 2. A woman divorced from her husband by reason of her husband's adultery is blameless if she desires to marry; the priest is blameless who blesses her marriage; the husband is blameless in marrying again when he is divorced by reason of his wife's adultery: 3. The man who marries a woman divorced for adultery, although he be himself single, is an adulterer, and liable to the punishment of adultery: 4. The priest shall be degraded who pronounces a benediction upon a second marriage when the first marriage is dissolved by mutual consent, which is unlawful[h]. These Canons exhibit manifest signs of a more relaxed and unrestricted doctrine of divorce. They plainly contemplate a dissolution of marriage, and convey a licence of marrying after divorce for adultery to the

[g] Ux. Ebr. l. iii. c. 28. Bingham, b. xxii. ad fin. [h] Ux. Ebr. l. iii. c. 32.

injured and innocent party; and at the same time lay a restraint upon the adulteress in the nature of a penalty or stigma upon her offence. The laws of the empire had allowed marriage to be dissolved for other causes besides adultery, and the decisions of synods and the opinions of theologians were equally feeble in counteracting these laws and their natural consequences. After the subversion of that empire and its laws, the divines, under the tyranny of Mahometan masters, became the principal judges of divorce, and they not only conceded second marriages after divorce, but, while they understood fornication in our Lord's clause of exception to signify adultery, they interpreted it not of the only cause of divorce, but as a specific cause, under which other causes were included[1].

In the Roman Church the traces of the primitive doctrine had not entirely disappeared. In the fourth

[1] Ux. Ebr. l. iii. c. 32. The Mahometan is permitted by the Koran to repudiate his wife twice, with a reserved right of claiming her again, which is forfeited by a third repudiation, and can only be recovered upon the woman's divorce from a second husband. This precaution is supposed to restrict the practice of divorce. The woman is not permitted to separate herself after the first or second divorce, except under certain circumstances; and she is placed under various restrictions in availing herself even of the third repudiation. Mod. Univ. Hist. vol. i. p. 367. Among the Druses the woman is divorced not only for adultery, but under the slightest pretext: and it is a custom among them, that if a wife asks her husband permission to go out, and he says "Go;" without adding, "and come back;" she is thereby divorced; nor can her husband recover her, even though it should be their mutual wish, till she is married again according to the Turkish forms and divorced from her second husband. Burckhardt's Travels in Syria.

council of Toledo (A. D. 633.) religious apostacy was made a ground of divorce; and it was ordained, that if any Jews should marry Christian women, they should be admonished by the bishop of the place, that if they wished to continue in marriage they should become Christians. But if upon such admonition they refused, they should be separated, because an infidel cannot continue in matrimonial union with a Christian. The venerable Bede also, in a commentary upon Matthew v. 32, evidently borrows the sentiments of Augustin, and remarks, that fornication is not to be understood only of whoredom committed with the husbands or wives of other persons, but of all concupiscence, or avarice, or idolatry, which makes a man to err from the law of God. When therefore a wife commits any thing of this kind, her husband, in divorcing her, divorces her on the ground of fornication not only in her, but in himself: in her because she has fornicated; in himself that he may not fornicate[k]. In the *Noble Lesson*, written in the language of the Vaudois, about the year 1100, divorce is discountenanced in terms the most unlimited: "The old law had power to make null (or divide *di partir*) marriage, and that bills of divorce might be given: but the new saith, Thou shalt not marry her that is put away; and what God hath joined, let no man separate[l]."

The compilation of a new body of canonical law did not however decide the question of second marriages after divorce for adultery, which appear to

[k] Ux. Ebr. l. iii. c. 27. [l] Gilly's Excursion among the Vaudois. Appendix II.

have been favoured by the councils of Soissons, (A. D. 744.) of Verberies, (A. D. 752.) of Rome, (A. D. 826.) of Tibur, (A. D. 895.) and of Bourges, (A. D. 1031.) The council of Rheims (A. D. 1049.) prohibits the husband to marry another wife *legitimâ uxore derelictâ:* and the council of Dalmatia excommunicates such as divorce their wives without judgment of the Church. Pope Alexander III. answered to the consultation of the French prelates, that although the Church of Rome was not wont to separate persons lawfully united on account of crimes, nevertheless, if the general custom of the Gallican Church allowed the dissolution of such marriages, he would not refuse. The council of Compiegne (A. D. 757.) allowed divorce for leprosy. If a leprous husband had a wife in sound health, he might if he pleased give her permission to take another husband, and she was free at her pleasure to avail herself of the privilege. The man had the same liberty. The council of Florence (A. D. 1439.) decided, that the subsistence of the law of divorce, and the difference in other points of discipline between it and the Latin Church, could be no obstacle to their reunion[m]. In the council of Wermeria (A. D. 870.) it was ordained, as the text is corrected by Selden, that if a wife conspired against her husband he might divorce her: but Selden throws a doubt on the lawfulness of his marrying again, from the increasing prevalence of the distinction between divorces *a vinculo* and divorces *a mensâ*[n].

[m] Fergusson, p. 445. [n] Ux. Ebr. l. iii. c. 33.

When the question of divorce was at length agitated in the council of Trent, it was argued, that the Church was competent to separate the married parties from cohabitation, for all causes deemed expedient, without dissolution of the bond, which being bound by God could not be dissolved by man. The apostolical case of the separation of the believer from the unbeliever was maintained not on the ground of the dissolubility of heathen marriages, which were affirmed to be indissoluble by the law of nature, the words of the primary institution, and the practice of the Church in sustaining them: and it was therefore proposed to confirm the exposition of Cajetan, that the separation of the believer from the unbeliever did not imply the dissolution of the matrimonial bond. Fornication was conceived to be the ground of separation from cohabitation only: and hence arose a difficulty of reconciling the one only cause of divorce, which the Gospel sanctioned, with the many causes of divorce which the Church allowed, if in both cases the same kind of divorce was intended: and in the midst of conflicting expositions, which under such circumstances it was not possible to approve or reject, it was agreed that the article of divorce should be condemned, because the contrary doctrine had been made an article of faith by apostolical tradition.

Considerable debates afterwards arose, when it was proposed, at the instance of the cardinal of Lorraine, and with the view of opposing the doctrine of the Reformers, to annex an anathema to the Canon, condemning the divorces allowed in the code of Justinian. The anathema was supported

because it was agreeable to the doctrine of the schools and the decrees of the pope: but scruples were nevertheless entertained, from its opposition to the opinion of Ambrose, and some of the Greek fathers. But as it was an article of faith, and met with the general concurrence of the assembled divines, the Canon was reformed, and the anathema added, condemning such as say that the bond is dissolved by adultery, and that either of the parties is free to marry during the life of the other. The Canon was again revised, on the petition of the Venetian ambassadors, alleging that Corfu, Cyprus, and other islands subject to the Venetian state, were inhabited by Greeks, who were accustomed to divorce their wives for fornication, and to marry others, for which they should not be condemned in their absence and without having been summoned to the council. The plea of their not having been summoned was repelled, but in respect to their proposition, and to the opinion of Ambrose, it was resolved to disuse the anathema, and instead of condemning such as say that marriage may be dissolved for adultery, in conformity with the opinions of Ambrose and the Greek fathers, and the practice of the Eastern Church to anathematize those only who say that the Church may err in teaching, that the matrimonial bond is not broken by adultery, and that it is not lawful to contract another marriage, as the Lutherans affirm.

This moderate but equivocal course was generally approved, and the canon was ultimately settled in this form: If any one shall say that the Church errs in teaching according to the doctrines of the apostles

and evangelists, that the bond of marriage cannot be dissolved on account of the adultery of either party; and that neither, not even the innocent, who has not given cause for the separation, can, while the other party lives, contract another marriage; and that adultery is committed by the husband who divorces his wife and marries another, and by the wife who divorces her husband and marries another; be he accursed.

Other matrimonial questions were determined in this council, having especial reference to the impediments and the dissolution of marriage; asserting the power of the Church to add to and to dispense with the Levitical interdictions, and to constitute other impediments of marriage; denying the dissolution of marriage for heresy, troublesome conversation, or voluntary absence; authorizing the dissolution of marriage by a religious vow; and maintaining the power of the Church to separate parties from cohabitation for various causes, for a limited or unlimited period[o].

These doctrines were all confirmed with anathemas, and were evidently designed to censure the opinions of the Reformers; among whom it was generally agreed, that the bond of marriage was dissolved by adultery, and by wilful desertion. The former opinion was collected from the words of our Lord, and the latter from those of his apostle: but it is not necessary again to enter upon the objections to the dissolution of the bond upon either of these

[o] History of the Council of Trent, b. vii. and Sess. xxiv. can. 3, 4, 5, 6, 7, 8.

grounds. It will be more useful to specify the causes which have been argued to be sufficient to preclude the contract of matrimony, and to nullify it, if it is contracted: viz. 1. misapprehension of the person; 2. servile condition; 3. religious vows; 4. consanguinity; 5. crime (of adultery, or of homicide in furtherance of the adultery;) 6. religious difference; 7. violence; 8. orders; 9. the bond of marriage; 10, 11. affinity by espousals or marriage; 12. impotence. The causes of divorce, besides adultery and desertion, are, 1. infidelity; 2. heresy; 3. vows of chastity; 4. danger to the person; 5. crime; 6, 7. barrenness and impotence; 8. incurable, loathsome, and contagious, disease; 9. madness; 10. affinity by fornication; 11. transportation for crime[p]. To these multiplied causes are added in the Prussian code, 12. incompatibility of temper, or quarrelsome disposition; 13. opprobrious crimes; 14. false imputation of such crimes; 15. unlawful actions, injurious to the life, honour, office, or trade, of the other; 16. ignominious employment; 17. drunkenness, extravagance, and imprudent management; 18. inadequate maintenance; 19. mutual consent, if there are no children[q].

It is in vain to suppose that there is any process of human reasoning, by which these various causes of divorce can be deduced from the single word which forms the principal feature in the clause of exception, and on the application of which the whole scheme of divorce in the Christian Church is constructed. There can be little doubt that there

[p] Gerhard de Conjugio, s. 641—691. [q] Fergusson, 448.

was a peculiar idiom in the use of the original word, and although its proper sense was retained for a while, it gradually fell into disuse. The doctrine of divorce will be cleared of many of its difficulties, if this term be interpreted, according to its original appropriation, of the invalidity rather than of the dissolubility of marriage; and be recovered from the sense of adultery, which it was probably made to bear in the Latin Church, from the ambiguity of the words under which it is represented by Tertullian, and in the Greek Church, from the natural preference of the classical to the Hellenistic signification; which nevertheless implied the validity of the marriage; and being interpreted in connexion with other texts liable to the same misapprehension, was made, in the language of Lactantius, to signify the dissolution of the marriage. The misapplication of the clause of exception to the texts from which it was excluded, was the final confirmation and consummation of the error. The connexion of the Church with the empire, at the critical period in which the word was misunderstood; the indiscriminate admission of new disciples; the degenerate practice of professed believers; the publication of successive edicts, accommodated to the old and prevailing licentiousness in respect of divorce; the feeble hesitations of a complying hierarchy, undecided on a doctrine, of which the genuine exposition was lost, prone to the vain preference of monastic life, and entering upon an age of darkness and superstition, of scholastic subtlety and scriptural ignorance—all succeeded in throwing an impenetrable veil over the purity and simplicity of the primitive doctrine, of

which no vestiges were left, except a general persuasion (confined latterly to the Western Church) of the indissolubility of marriage, with a consequent prohibition of marriage after divorce, and the universal renunciation of marriages with the unbelieving. These points were not abandoned: and on these traditions, not only because they were for a time universal and uninterrupted, but because they correspond with, and are authorized by, the clearest and most consistent exposition of the Scriptures, it is proposed to renew the original and primitive sense of the clause of exception, to restrict the application of that clause, and to affirm, that if marriage be not invalid by reason of incest and previous disqualification, it is indissoluble: and that where it is not originally invalid, the husband may not separate from the wife, nor the wife from the husband, without dangerous temptation to adultery, nor marry again, without actual commission of the offence.

Comber, who interprets the clause of exception in the sense of adultery, nevertheless maintains the indissolubility of marriage, in terms which may form an appropriate recapitulation of the present argument: "Though the Jews allowed to marry again after divorce, ... Jesus, correcting this custom, saith, Whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whosoever shall marry her that is divorced committeth adultery: so that he allows divorce in no case but that of fornication . . . . but in no case at all doth Christ allow marriage after divorce, calling it plainly adultery; and in Saint Mark, whose Gospel we must grant to be true and perfect in all neces-

saries, Jesus saith, Whosoever shall put away his wife, and marry another, committeth adultery against her. And though in Saint Matthew we read, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery: we must expound that by the preceding, Matt. v. 32; viz. that no man may put away his wife, except for fornication, and even then he may not marry again; which is confirmed by the words of Saint Paul, affirming, that she who is married to another man, while her husband liveth, is an adulteress; viz. because the woman is bound by the law to her husband, so long as he liveth. And speaking of a woman parted from her husband, he saith in Christ's name, i. e. according to his sense declared in the Gospel; If she depart, let her remain unmarried, or be reconciled to her husband. And although the vile custom of marrying after divorce, used among the heathen Romans, could not suddenly be retrenched on their conversion to Christianity, which makes some of the imperial laws to favour such conjunctions; yet the primitive fathers and councils, the best interpreters of Scripture, and the surest witnesses of the sense of the catholic Church, do generally condemn such marriages as adulterous. So Saint Hierome, Saint Chrysostom; so Saint Ambrose and Saint Augustine do determine this matter; and long before them Clemens Alexandrinus and Origen do utterly condemn such as marry again after divorce. To all these we may add the Canons of the apostles, and many authentic canons of the primitive councils abroad; viz. that of Arles and Elliberis: and the first council of Milevi plainly

affirms, that it is the doctrine of Christ and his apostles, that the divorced shall remain unmarried; and the same is decreed by the famous council of Carthage: to all which much more might be added, but I will only note, that from the first conversion of our Saxon ancestors, these marriages after divorce have been prohibited, as may be seen in those ancient canons of this nation, which have condemned them as adultery. So that we do, on just authority, conclude, it hath been the constant doctrine of the catholic Church, that the bond of matrimony, once rightly tied, can never be dissolved but by death: and although some contentious persons have disputed against this eminent truth, to me it seems very rational to maintain this principle, as well to prevent the frequency of divorces, as to make it necessary to choose warily, since we can never choose again, till God, in whose presence we promised to live together till death, do set us at liberty, by the taking away of one party[r]."

[r] Off. of Matrimony, Sect. ii. ad fin.

SECTION V.

The English Law of Divorce.

THERE is nothing in the doctrine which has been proposed, which is not in perfect agreement with the received rules and principles of the law of England, which holds the indissolubility of marriage, with the only exception of such marriages as are originally void, on the ground of some impediment, by which the contract is not superseded or dissolved, but precluded and annulled.

The difficulties, which are inseparable from the principle and practice of divorce for adultery, are not however abated by any provisions of the English law: and if in other countries there is reason to object, that the right of divorce has been arbitrarily assumed, and that in its operation it has been unfavourable to social happiness and moral virtue, it may be difficult to vindicate the peculiarities of the English practice from the same exceptions, and to establish the justice of the principle, the wisdom of the administration, or the virtue of the effect.

The indissolubility of marriage is a main principle of English law, asserted without any exception or reserve in the formularies of the Church, in which the parties pledge themselves, either to other, that they will live together so long as they both shall live, and until death shall part them. The unequivocal intention of these expressions is ascertained by the circumstance of their derivation from the Romish

ritual, in which the doctrine is undisputed; and it is confirmed by the contemporary statute, 32 Henry VIII. c. 38. declaring all marriages, celebrated in the face of the Church, and consummate, to be indissoluble; by the legal definition that no marriage is voidable which is not void *ab initio;* by the practice of the ecclesiastical courts, in laying the husband under a necessity of providing alimony for a wife divorced *a mensâ*, and of maintaining her as if the marriage continued, in contemplating the possibility of their reunion, by granting the separation only until they shall be reconciled, and in requiring a cautionary bond, that they shall not contract matrimony with any other person during the life of each other; and by the provisions of the common law, under which the husband and wife are but one person, and the legal existence of the woman is suspended during the marriage, and incorporated in that of the husband; under which the marriage of either, during the life of the other, is a nullity, and the dower is not forfeited in the case of a divorce *a mensâ*, even though adultery be the cause, except in the particular case of the woman's eloping from her husband, and living with the adulterer, when it is forfeited, but recoverable on the reconciliation of the husband, by the statute of Westminster. It is argued by the civilians, that the bond of marriage cannot be forfeited but by natural death: the parties may be separated, but they nevertheless remain husband and wife. Thus the indissolubility of marriage rests not on the terms of the agreement between the parties, but "on the law of the country. One proof of this is, that marriage was held indissoluble in

England before the Marriage Act," and that Act asserted not the voidability but the nullity of the marriages which it proscribed. "Another is, that the English apply the doctrine of indissolubility to all marriages wherever celebrated, by whatever forms, and in whatever words[a]." But "the best practical evidence of the general indissolubility of the contract of marriage is perhaps to be found in the *occasional* permissions granted for the dissolution of the marriages of particular individuals, which permissions can only be obtained under special circumstances, and by the concurrent vote and consent of the three branches of the legislature[b]," and are in fact suspensions of the ordinary law of the land.

It is too plain to be disputed, that the present law of marriage and divorce in England is derived through that which prevailed during the ascendancy of the Church of Rome. In the remote period in which Britain was held under the dominion of the Romans, it is not improbable that the imperial law of divorce was admitted, and when they left the country, it was not entirely superseded by the better influence of Christian truth. Relics of the Roman practice may be traced in the laws of the Cambrian Prince Howel Dhâ, which contain various regulations of divorce, permitting, with the forfeiture of all her goods, the divorce of a wife who should hold any familiarity with any other man than her husband; and prescribing the form in which the woman might recover her goods from a husband by whom she had been unlawfully divorced, and who was

[a] Fergusson's Reports, p. 401. [b] Poynter's Eccl. Courts, p. 70.

married to another woman; and in which a man having divorced his wife, and afterwards repented of the act, might resume the possession of her, even after her marriage to another man. The wife also had her privilege of divorcing herself from her husband who laboured under certain specified infirmities. This was the British law, and, as it was published with the concurrence of the priests and nobles, it may be considered authentic evidence of the British rule and practice of divorce, as it was held in the tenth century, by remote tradition from imperial Rome. The Anglo-Saxons followed a rule more conformable with the manners of their progenitors the ancient Germans, with whom divorce was unknown, or was very unusual, and submitted to the law of the Church of Rome, from the first introduction of Christianity amongst them, as appears from the Canons of councils; from the letters of Pope Gregory to Augustin the first missionary from Rome to England; from the silence of the Saxon laws concerning divorce; and from the immemorial reservation of the cognizance of matrimonial causes to the ecclesiastical courts[c]. In the council of Hertford, held under the Heptarchy, so early as A. D. 683, it was decreed, that no man should leave his own wife, but as the holy Gospel teaches for the cause of fornication; and if any man shall divorce his own wife, to whom he is joined in lawful matrimony, he shall not, if he wishes to be indeed a Christian, marry any other woman, but shall remain as he is, or be reconciled to his wife[d]. In the reign

[c] Ux. Ebr. l. iii. c. 30. [d] Spelman Concil. Herudford, Art. x. quoted by Tebbs.

of Henry III. Simon de Montford obtained a dispensation from the pope for the ratification of his second marriage in opposition to the laws and canons of the Church[e], which were of course ordinarily opposed to such marriages. By the common law, until the reign of Edward III. the indissolubility of marriage was so unreservedly maintained, that the woman did not lose her right of dower under a sentence of divorce *a mensâ* in consequence of adultery; and the statute of Westminster put no further restriction upon this right than to take it from the woman who should elope from her husband and live with the adulterer, implying at the same time the continuance of the marriage, by allowing the claim to be renewed on the voluntary reconciliation of the husband. A curious question arose on the construction of this statute after a very short interval in the extraordinary conduct of one John de Cameys, in making an entire and voluntary surrender of his wife and all her goods and chattels to Sir William Paynel. This is called by Selden a prodigy, and by Coke a marvellous and unheard of conveyance. On the death of Cameys, and her marriage to Paynel, the woman claimed her dower of Cameys, to which was objected, on the part of the king, that her right was forfeited, because she had eloped from her husband,

[e] Tebbs's Essay, p. 204. The facility with which such dispensations were obtained is strikingly illustrated in the case of King John, who being divorced from the Duke of Gloucester's daughter was in the same year remarried to Isabel, the heiress of a noble family. And indeed King John's first wife had been previously to her marriage with him divorced from Henry de Leon, Duke of Saxony. Ibid.

and had been living with an adulterer. The woman replied, that she had done this by the act of her husband. The matter was debated for two years before Parliament, and the petition was eventually refused, notwithstanding the purgation of adultery in the spiritual court, of which it was held that no notice could be taken, except in reply to a reference from the king. In this case the question was not concerning the adultery, or the dissolution of the marriage in consequence of the adultery, which was not brought into dispute, but whether a wife voluntarily leaving her husband with his consent was in the same condition, and liable to the same penalties, as the woman who left her husband without his consent. The question was rightly decided in the affirmative: a contrary decision would have given countenance to the alienation of wives, of which there is no other instance in England, although the practice was not uncommon in Ireland, where wives were divorced, sold, given away, and exchanged. These charges were brought against Ireland in the epistles of contemporary popes, which only require the prevention and restraint of similar offences in England, without asserting the fact of their commission, or insinuating that England did not act in conformity with the ecclesiastical authorities[f].

The sum of the English doctrine of divorce is brought up to a period nearly coeval with the Reformation by the first institutional writer of Britain, who distinctly states, that "there be two kinds of divorce; the one that dissolves the marriage *a vinculo*

[f] Ux. Ebr. l. iii. c. 30.

matrimonii, as for consanguinity, &c. and the other *a mensâ et thoro*, as for adultery; because that divorce, by reason of adultery, cannot dissolve the marriage *a vinculo matrimonii*, for that the offence is after the just and lawful marriage[g]."

By the statutes 24 Henry VIII. c. 12. 25 Henry VIII. c. 19, 21. it was enacted, that no appéal should be made to Rome in cases of divorce, as had been the usual practice before the Reformation, which principally originated in the circumstances of the appeal made by the king to the pope in respect of his divorce from the Queen Catherine. But there is nevertheless sufficient evidence of the continuance of the ancient doctrine in upholding the divine institution of marriage, and in subordination to that institution, the permanence and indissolubility of marriage; the religious celebration of marriage; the reservation of matrimonial questions to the courts nominally ecclesiastical; the principle and rule of interpretation upon which those questions are decided; and the continued distinction between divorces *a vinculo matrimonii* and divorces *a mensâ et thoro*.

In the use of the English law the divorce *a vinculo* and the divorce *a mensâ* are merely technical terms, indicating a certain judicial process; but in ordinary apprehension involving an evident contradiction. The divorce *a vinculo* is in fact no divorce, for the bond which it professes to dissolve never had legal existence, it was a nullity from the beginning: the

[g] "Littleton, 1 Inst. 32, 33, 235. 3 Inst. 88." Fergusson, 280. Burn's Eccl. Law.

divorce *a mensâ* is also no divorce, for it does not disunite the parties, or render them free to marry again: it is but a conditional suspension of the duties of marriage, a temporary separation which contemplates the possibility of reconciliation and renewed cohabitation. "In all those cases, where the divorce is *a vinculo matrimonii*, the marriage was not *de jure*, according to the canonists, because it was void *ab initio:* for when the incapacity arises from any matter precedent to the marriage, then the marriage is only *de facto*, and a sentence of divorce in such case is only declaratory that the marriage was dissolved, for it is absolutely void before, and either of the parties might marry again though the other was living. But it is otherwise when the divorce is occasioned *ex causa subsequenti*, as in cases of adultery, cruelty, and the like. For there the marriage being once good it never can be dissolved *a vinculo*, because such subsequent cause cannot affect the bond of matrimony, though it is sufficient to separate the parties *a mensâ et thoro*, which is in the nature of a temporal and not a perpetual divorce: and if either of the parties shall marry again in the life time of the other, such marriage is void, and so it was adjudged in the case of Rye and Falcomb. And, as a further confirmation of the law in this matter, it was afterwards adjudged, that a divorce *causâ adulterii* is no bar of dower, which shews that the marriage is not dissolved[h]." On the contrary, if the woman be divorced *a vinculo*

[h] Ayliffe's Parergon, p. 229.

matrimonii, she shall not be endowed, on the ground, *ubi nullum matrimonium, ibi nulla dos*[i].

The only cases in which a dissolution of the bond of marriage is allowed, are those in which the contract is void *ab initio:* and in which it is precluded by some circumstances which render the parties incapable of marriage, and in respect of which the sentence of divorce is rather a public and official declaration of the original nullity of the marriage; than a proper divorce or dissolution of the bond which never had legal existence.

Precontract, consanguinity, or relation by blood, affinity, or relation by marriage, and some particular corporal infirmities, are the canonical disabilities which render a marriage voidable, and require the parties to be separated *pro salute animarum:* but after the death of either party the courts of common law will not suffer the spiritual courts to declare such marriage to have been void.

The civil disabilities which make the contract void *ab initio* are, a former marriage, the want of age, the want of reason, and the want of proper celebration. These disabilities do not dissolve a contract already formed, but they render the parties incapable of forming any contract at all: they do not put asunder those who are joined together, but they previously hinder the junction: and if any person under these legal incapacities come together, it is a meretricious, not a matrimonial, union[k]. This notion of the divorce *a vinculo* so far coincides with

[i] 2 Bl. Com. c. 8. [k] 1 Bl. Com. c. 15.

the interpretation which has been put upon our Lord's clause of exception, as it is restricted to some cause not dissolving but precluding the marriage.

The only causes of divorce *a mensâ et thoro*, or of the suspension of the conjugal intercourse, are cruelty and adultery.

The very nature and law of marriage render cruelty a just ground of the penalty or the privilege, which is implied in a sentence of separation; for if marriage be ordained for the help and comfort of the parties, its end is frustrated by an unkind and cruel treatment, and the protection of the innocent and the restraint of the offender, demand a judicial interruption of the relation. The cruelty, however, which calls for this measured divorce, and justifies the temporary separation of the parties, is restricted to such conduct as endangers the health or life of the complaining party, and renders cohabitation unsafe: it is only when a series of unkind treatment is followed by words of menace; when blows have been struck; or when there has been a continuance of violent passion, frequent abuse, opprobrious accusation, and the excitement of such terror as produces illness, although no blows have been struck, that there is occasion for the prompt interference of the ecclesiastical jurisdiction, and that the injured party is entitled to the remedy provided in a sentence of separation. It is natural that these suits should be most frequently promoted by the wife; but there are nevertheless instances in which the husband has had occasion of complaint, and has obtained the interposition of the court. It may not however be

supposed that the court will interfere in ordinary cases of domestic litigation, in which there is no personal danger; or that it will grant a sentence of separation where the conduct of the complaining party has been unguarded and improper, where it has given occasion to the complaint, which may be removed by an improved behaviour, or where it has not been resented with an inordinate and dangerous severity. If the conduct of the wife has been incompatible with her duty; if it has been violent and outrageous; if it has justly provoked the indignation of the husband, or exposed his person to danger, and obliged him to resort to the means necessary for his personal security; the wife must seek, in the amendment of her own manners and disposition, that redress which the court will not afford[1].

In seeking a divorce in the ecclesiastical courts, on the ground of adultery, it is so difficult to obtain direct evidence of the fact, that it is held sufficient to exhibit presumptive proof, and a chain of collateral and probable circumstances, to establish judicial inference of guilt. The mere confession of the party, by which marriage was formerly dissolved for pretended causes, by the collusion of the parties, cannot now be received as proof of the criminal act. It is only when the confession is supported by collateral evidence, that it is allowed to confirm the presumption of guilt, and to constitute substantial proof of the adultery.

When the suit is brought by the wife, no prejudice arises from delay in bringing the action, because

[1] Poynter, c. 12. Ayliffe, p. 229.

forbearance upon her part is commended, until all hope of reclaiming her husband has ceased: but if the husband shall suffer any considerable interval to elapse between the knowledge of the fact and the date of the complaint, it gives occasion to an inference to his prejudice, that he has slumbered over the wrong of which he complains; to a suspicion of indifference and insincerity in his prayer for a separation; and to a presumption, that by acquiescence in the injury, the penalty has been remitted by an implied condonation[m].

In every suit of divorce it is competent to the wife to apply for alimony, which is the allowance made to the woman out of the husband's estate, at the discretion of the ecclesiastical judge, on consideration of all the circumstances of the case, for her support during the pendency of the suit; or after a sentence of divorce, as a permanent allowance to be paid by the husband to the wife during the period of their separation. It is generally proportioned to the rank and quality of the parties, and may vary with the variation of the husband's means; but in case of elopement, and living with the adulterer, the ecclesiastical law allows no alimony[n], and an ancient statute takes away the right of dower, which is only restored by the voluntary reconciliation of the husband.

There are five cases in which no sentence of divorce will be granted upon the account of adultery: 1. if there be a condonation; i. e. if the husband is reconciled to his wife, and continues to cohabit with

[m] Poynter, c. 10.

[n] Poynter, c. 14. 1 Bl. Com. c. 15.

her, after he knows that she has been guilty of adultery: 2. if the husband directly or indirectly consents or connives in the adultery of his wife: 3, 4. if the adultery be involuntary, either by mistake or force: 5. if the offence is taken away by mutual compensation, and each party can prove the other to be guilty of adultery at any time before the conclusion of the suit, even during a separation founded in the adultery of the defendant. In this case the party cited is entitled to be dismissed from all observance of justice, as respects the particular grievance complained of, and consequently stands, in point of the relative rights of matrimony, as though no offence had been committed. A husband cannot obtain a divorce in the ecclesiastical courts for the adultery of his wife, if she recriminates, and can prove that he also has been unfaithful to the marriage vow: this seems to be founded on the following rational precept of the civil law: *Judex adulterii ante oculos habere debet et inquirere, an maritus pudice vivens mulieri quoque bonos mores colendi autor fuerit. Periniquum enim videtur esse, ut pudicitiam vir ab uxore exigat, quam ipse non exhibeat*°.

The doctrine of divorce may be called the cradle of the English Reformation, of which the authors and promoters were under a necessity of investigating its principles, with a strong bias and temptation to accommodate their opinion to the capricious will of the sovereign, and the circumstances of the age:

° Poynter, c. 14. 1 Bl. Com. c. 15. with Christian's note 13. The rule rests on the authority of Lactantius, Div. Inst. l. vi. c. 23. from whence it is copied by Isidore, Div. Off. l. ii. c. 19.

but although they were constrained, in the exercise of a manly judgment, and upon the fullest conviction, to reject some positions of the existing doctrine and law, as the sacramental character of marriage, and the dispensations of the pope; and there were other points upon which a difference of opinion was allowed for a time to prevail, nothing was decided in prejudice of the main doctrine of the indissolubility of marriage, which was eventually sustained; and it is only upon particular occasions, and by extraordinary enactments, that it has ever been superseded.

In the projected *Reformatio Legum*[p] it was proposed to grant divorce, with liberty of marrying again, to the unoffending party, in cases of desertion, of protracted absence, of hatred which threatened the life, and of cruel treatment. In respect of the partial divorce *a mensâ et thoro*, under which the force of the matrimonial bond was sustained, while the parties were discharged from the relation, the intercourse, and the duties of marriage, it was pronounced to be contrary to the Scripture, marked by great perversity, and the source of many evils in respect of marriage; and its abolition was therefore proposed. A strong desire was at the same time expressed for the reconciliation of the parties, not by force of law, but on the principle of Christian charity; in failure of which, the innocent party was to receive licence from the court, to proceed, at his discretion, to a new marriage, on the principle that

[p] De Adult. et Divort. c. 5, 6, 8, 9, 10, 11, 16, 17, 19.

the innocent party should not be punished for the crime of the guilty, or subjected to the necessity of an involuntary celibacy; and it was contended, that the innocent party might contract a second marriage without imputation of adultery, since Christ had made an express exception of the case of adultery. But if the party convicted of adultery should be able to recriminate, and prove the same offence in the other party, before that other party had contracted a new marriage, the equal faults of both should be followed by equal penalties, and the original marriage subsisting between them should not be rescinded but confirmed. The same rule was to be observed, if the husband had proposed adultery to the wife, or the wife to the husband. This may be thought an equitable construction of reciprocal offences, but it is not free from the strongest and most weighty objections. If the bond of marriage is broken at all, it must be broken to one as well as to the other; the bond of union must hold both or neither. A cannot be parted from B, while B is bound to A; and to permit A to marry C, while B is restricted from marrying, on the ground of the subsisting marriage with A, is indeed "to place a man in the situation of having a wife and an half; maintaining with the *whole wife* all the reciprocal duties and mutual claims of affection and support which belong to matrimony, and receiving at the same time from the *half wife*, the solitary duty, not of personal fidelity, but of matrimonial restriction, without owing her any return of protection, or maintaining with her any common ties of intercourse,

interest, or affection[q]." In any sense, in which adultery can be conceived to dissolve the bond of marriage, it must disengage the guilty by the fact, before it can disengage the innocent by the consequence. It would be tedious to insist again upon the inconsistencies of this popular doctrine, and it is obvious to remark, that the theory suggested in the *Reformatio Legum* is possessed of no public authority; that it is at variance with itself in contemplating the reconciliation of the parties in one case, their continued connexion in other cases, and the entire separation of one, with a restriction upon the other in a third case; and that the whole doctrine proceeds on the assumption of two very questionable propositions: 1. that adultery is a dissolution of the bond of marriage; and, 2. that adultery is meant in our Lord's clause of exception from the general indissolubility of marriage.

In the unsettled period of the Reformation, there was a practical illustration of the argument of the dissolution of marriage by adultery, in the celebrated case of the Marquis of Northampton, whose wife had been convicted of adultery, and who had therefore obtained a sentence of divorce *a mensâ et thoro*. Hence arose a question, whether that divorce was such a dissolution of the bond of marriage as permitted the husband to marry again, and the question was referred to a commission, consisting of Cranmer and nine other divines. Without waiting for the decision of the commissioners, the Marquis married

[q] Substance of the Speeches of Lord Mulgrave on the Divorce Bill, p. 44.

again, alleging in his defence the common argument of the age, that marriage was not indissoluble, but under the Romish doctrine of its sacramental character; and that if it were not dissolved, it would be very inconvenient, as the innocent party would then be under a necessity of living with the guilty, or falling into the same offence. The council were offended at the precipitancy of the Marquis, whose first marriage was not yet annulled; and he was ordered to be separated from his wife, until the decision of the commissioners should be known, which was certainly not facilitated by the fact of the second marriage. Cranmer made an elaborate and voluminous collection of the chief authorities and arguments on either side, and referred the matter in distinct queries to certain learned men, and a decision was eventually pronounced in favour of the second marriage, chiefly on the ground that Christ allows divorce for adultery, and that if marriage consists of the union of the two into one flesh, adultery, being a division of the union, is in fact a dissolution of the marriage, and that the parties cannot be separated and the bond remain in force. The referees, in answer to the questions proposed to them, resolved, that there could be no separation *a mensâ*, without a dissolution of the bond, because the duties must be discharged as long as the bond continues; that the woman divorced for adultery, ceasing to be the wife of him that divorced her, was as free to marry as if her husband was dead; and that she could not be allowed to return to her husband, as if she was bound to him by the bond of marriage.

It is a circumstance which throws considerable

doubt on the validity of this decision, that the Marquis was advised after a short interval to have a special Act of Parliament for confirming the sentence of the delegates, to which only two peers and two bishops objected, and by which the marriage was "declared lawful, as by the law of God indeed it was, any decretal, canon, ecclesiastical law or usage, to the contrary notwithstanding." In the very next year, however, on the accession of Mary, and the restoration of the popish doctrine, the Act confirming the divorce and the second marriage was repealed on the plea, that it "was procured more upon untrue surmises and private respects, than for any public good and increase of virtue; that it was an encouragement for sensual persons to practise, that by false accusation they might be separated from their wives, rather than a precedent to induce people to live with their wives in a godly sort." The matter underwent considerable discussion in the House of Commons, in which it is said, that the style of the Bill was so moderated "that it was not repealed as an Act sinful in itself, but it was only declared, that in that particular case the divorce was unlawfully made; for it is reasonable to believe, that the bishops had put into the first draught of the Bill a simple repeal of it, and of all such divorces, founded on the indissolubility of the marriage bond[r]."

In the *Reformatio Legum* it was proposed, that any man putting away his wife, even for adultery, at his own discretion, and without sentence of the court, should be deprived of the right of proceeding

[r] Burnet's Hist. of the Reformation.

against her. It is natural to suppose, that in this rule there was an indistinct and distant reference to the case of the Marquis of Northampton, in which the vacillation of discountenancing, of investigating, of approving, the divorce and second marriage, and of afterwards recommending a parliamentary confirmation of the measure, throws a strong doubt upon the validity of the principles upon which the measure was approved, and which were positively asserted in the *Reformatio Legum*. These doubts were confirmed by the circumstances under which it was proposed to enact, that no man should put away his wife and marry another, unless he were formerly divorced: to which the Bishop of Norwich objected, that divorce did not break the bond of marriage. The Bill fell in the House of Commons, being thought not necessary, for the laws were already severe enough against such double marriages[s].

Whatever was the private disposition of the chief Reformers in favour of a new theory of divorce, and however their disposition might be influenced by the conduct of the king, there was not in the reigns of Henry VIII. of Edward VI. or of Mary, any effectual or decided opposition to the doctrine of the indissolubility of marriage, or any permanent or general abolition of the restricted nature of the divorce which was granted upon proof of adultery.

[s] Burnet's Hist. of Reformation, pt. i. b. 1. A. D. 1552. "In 1554 we find a petition of the clergy in convocation addressed to the Parliament, requesting that the innocent woman when divorced should enjoy the goods and lands that were her own before marriage. What became of the petition does not appear." Tebbs, p. 211.

The Reformers themselves, in the revised ritual of marriage, continued to affirm the ancient doctrine, that the parties should live together till death should depart them. In the reign of Elizabeth, when theological opinions assumed a more settled character, the evidence of the dissolubility of marriage ceases to be negative, and possesses a positive authority. In the tables of marriage published by Archbishop Parker in 1563, not only are the causes letting and dissolving matrimony restricted to consanguinity and affinity, but it is expressly ordered, that persons marrying contract not anew with any other upon divorce and separation made by the judge for a time, the laws yet standing to the contrary: and the doctrine is sustained by the citation of the apostolical authority, forbidding the wife to depart from her husband, and requiring her if she be separated to remain unmarried. In the case of Foljambe, divorced from his wife by reason of her adultery and married to another woman, the validity of the second marriage was tried in the Star-chamber, where the temporal judges declared the second marriage null, because the divorce was only *a mensâ et thoro*, and Archbishop Whitgift affirmed, that several grave divines and civilians, whom he had assembled at Lambeth to consider the point, did all agree that the marriage was void[t]. The same doctrine was maintained in the Canons of 1597, in which it was ordered, that the parties mutually separated should live in chastity, and not enter into other marriages during the life of each other, and that no sentence

[t] Lord Mulgrave's Speech, p. 33.

of separation should be pronounced before sufficient caution was taken, that the parties should do nothing contrary to the inhibition.

This caution was repeated in the Canons of 1603, in which it is provided, that divorces *a mensâ et thoro* shall not be granted but upon the following conditions.

1. "That in all proceedings to divorce and nullity of matrimony good circumspection and advice be used, and that the truth may as far as is possible be sifted out by the deposition of witnesses and other lawful proofs and evictions, and that credit be not given to the sole confession of the parties themselves, however taken upon oath, either within or without the court." Canon 105.

2. "No sentence shall be given either for separation *a thoro et mensâ*, or for annulling of pretended matrimony, but in open court and in the seat of justice." Canon 106.

3. "In all sentences pronounced only for divorce and separation *a mensâ et thoro*, there shall be a caution and restraint inserted in the act of the said sentence, that the parties so separated shall live separately, chastely, and continently, neither shall they during each other's life contract matrimony with any other person: and for the better observation of this last clause the said sentence of divorce shall not be pronounced until the party or parties requiring the same have given good and sufficient caution and security into the court, that they will not any way break or transgress the said restraint or prohibition." Canon 107.

It has been objected, on a very partial view of the

history of divorce in England, that this canonical caution was a weak attempt of the ecclesiastics to alter the law of the land to their own purposes; that the Canon has received no sanction of Parliament, and can be pleaded in no court; and that the bond is peremptorily null, and only furnishes an inference that the divorce *a mensâ* anciently and without the bond gave authority to a second marriage[u]. The ancient indissolubility of marriage has been asserted on the authority of Littleton, and traced almost without interruption to the period in question. The ecclesiastical not less than the civil courts, if they infringe not the law of the land, are free to prescribe the course of their own proceedings; and the person who seeks a divorce in the ecclesiastical courts is required to conform with the rules of the court, the justice of which, especially in the requisition of the bond, is established by undisputed usage, and tacitly recognized by the practice of Parliament, in demanding the sentence of divorce *a mensâ*, which is not granted without the bond.

It was the complaint of this period, "that divers evil disposed persons being married run out of one county into another, or into places where they are not known, and there become to be married, having another husband or wife living, to the great dishonour of God, and utter undoing of honest men's children and others:" and an Act was passed, 1 Jac. I. c. 11. to restrain all persons from marriage until their former wives and former husbands be dead, by making the offence a capital felony,

[u] Woodfall's Parl. Rep. vol. xxxiii. p. 317.

which has however been mitigated by later statutes. This Act makes exception of five cases; 1, 2. of persons whose consorts shall have been absent for seven years; 3. of persons divorced by any sentence in the ecclesiastical court, and separated *a mensâ et thoro;* 4. of persons whose former marriage is declared void in the ecclesiastical court, and who are therefore loosed *a vinculo;* 5. of persons married within the age of consent, whose marriage is voided by their disagreement, implied in their second marriage[x]. In the two last cases there is in fact no second marriage, because the previous marriage is in one case void in itself, and in the other it wants the competent ratification. In the three first cases the penalty only is avoided; under the old law the subsequent marriage is null, and the offenders are liable to the censures and penalties of the ecclesiastical courts, to which the cognizance of the plea of bigamy, as well as of bastardy, was appropriated by the statute 18 Edw. III. st. 3. c. 2. In respect of the third exception, it is settled, "that if either of the parties shall marry again in the life-time of the other, such marriage is void, and so it was adjudged in the case of Rye and Fulcomb. And as a further confirmation of the law in this matter it was afterwards adjudged, that a divorce *causâ adulterii* is no bar of dower, which shews that the marriage is not dissolved[y]."

Under the Commonwealth the consideration of the doctrine of divorce was superseded by the Act which made adultery a capital offence: the fanciful

[x] 4 Bl. Com. c. 13. [y] "Noy's Rep. 100, 108." Ayliffe, 229.

speculations of Milton received no countenance public or private.

On the Restoration the old doctrine was renewed, but an extraordinary innovation was at the same time made in the general law of the land, and the customary practice of the courts, and the omnipotence of Parliament was exerted to pass a Bill of divorce, dissolving marriage and enabling the parties to marry again. Private Acts of Parliament are at all times rather exceptions than rules of law, and the jealousy with which they are viewed is not abated by the circumstances in which the "Act for John Manners, called Lord Roos, to marry again" originated. It was in an age of relaxed and libertine sentiments in respect of marriage and similar obligations; for the furtherance of a political intrigue; in the subserviency of a licentious court; and in compliance with the bad passions and designs of the most unprincipled of sovereigns, that the Bill was proposed and supported. The necessity of this private enactment proves the state of the law at the time. The amiable Evelyn has left an unexceptionable record of this iniquitous transaction. "When there was a project in 1669 for getting a divorce for the king, to facilitate it there was brought into the House of Lords a Bill for dissolving the marriage of Lord Rosse, and to give him leave to marry again. This Bill after great debates passed by the plurality of two votes, and that by the great industry of the Lord's friends, as well as the Duke's enemies, who carried it on chiefly in hopes it might be a precedent and inducement for the king to enter more easily into their late proposals; nor were they a little

encouraged therein when they saw the king countenance and drive on the Bill in Lord Rosse's favour. Of eighteen bishops that were in the House only two voted for the Bill, of which one voted through age, and one was reputed a Socinian[z]."

In the reign of William and Mary the question of divorce was again agitated in the case of the Duke of Norfolk, who, having proved his wife guilty of adultery, moved for an Act of Parliament for dissolving his marriage and enabling him to marry again. The Duchess was a papist, and a strong party was made for her, but the proofs were too full to admit of a doubt of her guilt. But the main question was on the subject of the Duke's second marriage, on which the bishops were desired to deliver their opinions, with their reasons, and were divided in sentiment[a]. The Bill was not pressed, but after a short interval the Countess of Macclesfield made a public confession of adultery, which she thought to be the most obvious and expeditious method of releasing herself from the uneasy terms upon which she lived with her husband, who was, as may be imagined, no less desirous of separation than herself, and prosecuted his design in the most effectual manner; for he applied not to the ecclesiastical courts for a divorce, but to the Parliament for an Act, by which his marriage might be dissolved, the nuptial contract totally annulled, and the children of his wife illegitimated.

[z] Evelyn's Memoirs, vol. i. p. 425. 1670, April 22. The bishops are said in a note to be Cosins, Bishop of Durham, and Wilkins, of Chester.

[a] Burnet's Hist. of his Own Times.

This Act after the usual deliberation he obtained, though without the approbation of some, who considered marriage as an affair only cognizable by ecclesiastical judges, and the following protest is registered in the books of the House of Lords:

"Dissentient; Because we conceive that this is the first Bill of that nature that hath passed, where there was not a divorce first obtained in the ecclesiastical courts, which we look upon as an ill precedent, and may be of dangerous consequence in the future. HALIFAX. ROCHESTER[b]."

Thus the year 1697 was made remarkable by the dissolution of a marriage solemnized in the face of the Church: but the precedent which was thus established, like the precedent of ancient Rome, was but very slowly adopted into practice. The method of obtaining the object necessarily confined its operations to a narrow circle; and the object itself was so contrary to the feelings and principles of Englishmen, that they required that its effects should be familiarized by custom, before they resorted to so novel a method of redress. In the interval of more than one hundred and twenty years, which elapsed between the Reformation and the date of the Bill to enable Lord Roos to marry again, the act in favour of the Marquis of Northampton stood alone, and that Bill was repealed, and no subsequent measures were taken for amending the repeal, or reestablishing the principle of the divorce. The Bill in favour of Lord Roos was carried, in an age of libertinism, by

[b] Johnson's Life of Savage, (the issue of the adultery.) Works, vol. x. p. 282.

a political intrigue, by a majority of two, after a strenuous opposition. In the one hundred and thirty years which followed this assumed method of divorce, there were one hundred and thirty-two Bills of divorce granted by Parliament; namely, eight in the first forty-five years; fifty in the succeeding sixty years; and seventy-four in the last twenty-five years, terminating in the year 1799. In the four years immediately preceding the session of 1800, there had been twenty-nine divorce Bills, besides five which had been rejected: in the session of 1799, ten were passed and two rejected: and it is a proof of the care and jealousy with which the progress of these Bills was watched, that the House of Lords was summoned forty times upon the twelve Bills[c]. This statement of the progress of these Bills, and of the accelerated ratio of their increase, may shew the strength of the prejudices, which were originally entertained against the total dissolution of marriage, and the pernicious facility with which these parliamentary divorces were sought and obtained, when these prejudices were relaxed and overcome.

It has been justly argued, that the precedent in favour of divorce is so recent, as to admit of any new regulation, without exposing that regulation to the imputation of novelty. In these Bills there was, for a very long period, an implied restriction in favour of the injured husband: he was permitted to marry, but the same indulgence was not conceded to the guilty wife. It is not here intended to weaken the force of the position, that the bond of marriage

[c] Lord Auckland. Woodfall's Parl. Rep. vol. xxiii. p. 43.

must be resolved in respect of both or neither, but to shew the gradual and assumed abuse of these petitions of divorce, by a simple statement of the original practice, under which these parliamentary divorces were merely remedial and in favour of the injured party. It was an hypothesis of the law, that as all divorce Bills were passed with a view to discharge the injured husband from his matrimonial bonds, and enable him to marry again: it was also implied and understood, that the divorced wife was not possessed of the same liberty; that however these parliamentary Bills might profess generally to dissolve the marriage, the general rule was followed by a particular restriction, confirming the licence to the husband, and making it lawful for him to marry again, and affirming the legitimacy of the issue of such marriage, without containing any similar provision for the marriage of the wife; and it is probable, that the Bills in question did not originally contemplate the freedom of the adulteress to enter upon a second marriage. It is by a very recent innovation on a practice in itself of modern date, that the adulteress has assumed a licence to marry; and although a certain acquiescence has been given to her claim, doubts have been thrown upon the legality of her marriage, which it has been deemed of importance to render legal for the past, by making illegal for the future[d]. It is clear, therefore, that there was no innovation in proposing to restrict the intermarriage of the adulterer with the adulteress, who had been placed, by the original spirit of the

[d] See Debates on Adultery Bill: Woodfall's Parl. Rep. v. xxiii.

law, under a general, if not a particular, restriction. There are nevertheless difficulties on either side of the question. If the bond is indeed dissolved, it is hard to conceive that the one is bound by obligations, from which the other is released; that the husband is at liberty to marry, and the wife restricted from marrying. If equal freedom is conceded, the adulterer is placed in a condition to offer a promise of marriage[e], which the adulteress is free to accept, taking advantage of her delinquency to disengage herself from the obligations of a marriage which has ceased to please, and obtaining new facilities of association with the convicted partner of her crime. Hence also arises a complicated system of collusion and connivance. The wife conceals the faults of the husband, that he may not be debarred of his Bill of divorce, in the benefits of which she is to participate. The husband needs not to exercise a marital jealousy over the wife, of whom he may so easily disengage himself; and the husband, the adulterer, and the adulteress, may concert their arrangements for the marriage before the Bill of divorce is obtained. Thus these Acts of the legislature are rendered auxiliary to a criminal purpose; and instead of inspiring terror, or inflicting punishment and disgrace, they give immunity, reward, and honour to the guilty.

The whole scheme of divorce is embarrassed with difficulties, which, however a precipitate practice may cut the Gordian knot, it is more easy to balance

[e] "Octavius Sagitta, plebei tribunus, Pontiæ, mulieris nuptæ, amore vecors, ingentibus donis adulterium, et mox ut omitteret maritum, emercatur, suum matrimonium promittens ac nuptias ejus pactus." Tac. Ann. l. xiv. s. 44.

than to remove. For a very long period Bills of divorce were passed exclusively at the suit of the husband: and it was not before the nineteenth century, and only in some very aggravated cases, that the claims of the wife for redress were entertained. The reciprocal nature of the conjugal relation, and the parity of injury sustained by the husband, who fears, from an adulterous wife, the possible succession of heirs not his own; and by the wife, reduced to the lowest indigence by the ruinous profligacy of an adulterous husband; would seem to justify the same right of redress for the same wrongs inflicted on either sex, and to claim divorce alike to the husband, who trembles for his posterity, and to the wife who is stripped of all her temporal comforts[f]. At the same time, the interdiction of marriage with a divorced woman, feminine delicacy and maternal tenderness require more forbearance from the wife, and preclude her from seeking such redress as implies the solicitation of a privilege to marry again: and it is certainly expedient to impose every possible restriction upon the licence of divorce.

It may not however be supposed that a parliamentary divorce can be obtained, without condition, or without investigation, by any one who is prepared to seek the special interposition of the legislature. The Earl of Macclesfield obtained his Bill of divorce without a previous application to the ecclesiastical courts; but when the aid of Parliament was more frequently solicited, it became the practice of the two Houses, in order to prevent fraud and collusion, in

[f] Earl of Carnarvon: Woodfall's Parl. Rep. v. xxxiii. p. 317.

passing these Bills, not only to examine witnesses, to be convinced of the adultery of the wife, but to require, also, that the husband should have obtained a sentence of divorce in the spiritual courts, and a verdict with damages in a court of law, from some one who has had criminal intercourse with his wife.

The restrictions which were thus thrown in the way of obtaining a divorce were found inadequate, and other measures were devised for restraining the progress of the practice. It was the object of the proposition of the Duke of Athol, in 1771, and of Bishop Barrington, in 1779, to prohibit the marriage of the woman for a definite period. Both Bills passed the House of Lords, but were rejected in the Commons; the latter by a very small majority. The abuse therefore proceeded, without further control, until the year 1798, when the following resolutions were adopted as a standing order of the House of Lords, and justified on the broad principle, that as a Bill of divorce was an act of the special favour of the legislature, it was competent to the House to prescribe the terms upon which the favour should be granted.

"I. Resolved, That for the future no petition for any Bill of divorce shall be presented, unless an official copy of the proceedings, and of a definitive sentence of divorce *a mensâ et thoro*, in the ecclesiastical court, at the suit of the party desirous to present such petition, shall be delivered upon oath at the bar of the House at the same time.

"II. Resolved, That for the future, upon the second reading of any Bill of divorce, the petitioner praying for the same do attend this House in order

to his being examined at the bar, if the House shall think fit, whether there has or has not been any collusion directly between him and his wife or any other person or persons touching the said Bill of divorce, or touching any proceedings or sentence of divorce had in the ecclesiastical courts at his suit, or touching any action of law which may have been brought by such petitioner against any person for criminal conversation with the petitioner's wife; and also whether at the time of the adultery, of which such petitioner complains, his wife was by deed or otherwise by his consent living separately and apart from him, and released by him, as far as in him lies, from her conjugal duty, or whether she was at the time of such adultery cohabiting with him, and under the protection and authority of him as her husband[g]."

The resolutions thus proposed in the form of a standing order, which might be suspended at the discretion of the House, at once recognized, and were designed to prevent, the collusion of the parties and the concession of divorce to persons who might be privately separated from their wives; and, without adverting to the recrimination allowed in the ecclesiastical courts, they required evidence of the domestic character of the husband, as the condition without which he could not succeed in his suit and petition of divorce.

It was in the course of a debate for rescinding these resolutions that Lord Auckland suggested the expedience of further provisions for preventing the

[g] Woodfall's Parl. Rep. vol. xvii. p. 198.

intermarriage of the adulterer with the adulteress, and the manner in which the suggestion was received by the House fixed his mind upon the subject, and eventually led to the introduction of the Bill for the prevention of adultery, of which the principal provision in respect of divorce enacted that the adulteress should not intermarry with the adulterer. The chief opposition to the Bill turned upon this point, and it was held, that it would operate with extreme and partial severity upon the woman, exposing her to a necessity of prostitution, preventing her return to virtue, and placing her in a condition of perpetual infamy, in the apprehension of which she would resort to every expedient to conceal her guilt, and would attempt to ruin her husband by the expence of prosecuting the suit in every court[h]. There were many instances of exemplary conduct in adulteresses, who had been restored to reputation by marriage with the adulterer, although this was not the chief motive or object of the adulteress, nor would the removal of it lay any restraint upon her passions[i]. The adulterer was now willing and bound by the laws of gallantry to marry the adulteress, and the only effect of the meditated prohibition would be to relieve him from this penalty, to prevent him from fulfilling his intention, and to furnish him with the plea that he was restrained by the law[k]. It was further maintained, that at the time of the Reformation the effect of

[h] Duke of Clarence; Lord Mulgrave; Duke of Bedford; Earl of Westmoreland. [i] Lord Mulgrave. [k] Lord Mulgrave; Earl of Carlisle; Lord Guildford; Earl of Coventry; Sir George Dallas.

divorce had been an entire dissolution of the bond of marriage, rather than that partial release which was common to the divorce *a mensâ*, and to the proposed Bill[l]: and that the Bill could not be carried into effect without limiting the powers of Parliament[m].

It was argued in defence of the proposition, that the appeals to compassion were irrelevant; that the alleged alternative of marriage or prostitution was a threat in favour of crime, that it was a plea which could not always be urged, since the adulterer might die, might be already married, or might refuse to marry the adulteress, and that she was free to marry any other man[n]. The cause of moral virtue was of more importance than the condition of the adulteress, whom the law would place in no other state than she had placed herself, a state of fitting retirement, in which the excitements of passion were not inflamed by any promise of elevation; and indeed the favour which had been lately shewn to the adulteress was a fatal proof of the necessity of the measure[o]. The renovated reputation of the adulteress was the very circumstance which demanded the most rigid precaution, as it tended to remove from the contemplation of women the danger of deviating from virtue, to offer encouragement to crime, and to exhibit a fatal example to the unmarried woman, whom the certainty of an irreparable injury preserved from the attempts of the seducer[p].

[l] Lord Mulgrave. [m] Sir Gilbert Heathcote. [n] Lord Grenville; Lord Auckland; Bishop (Barrington) of Durham. [o] Lord Grenville; Bishop (Horsley) of Rochester; Bishop (Porteus) of London. [p] Lord Auckland; Lord Eldon.

It was necessary to throw the protection of the same certainty over the married woman, to whom the adulterer might now make the same offer as to a single woman[q]; and to announce that the effects of adultery were irretrievable; that the character of the adulteress could not be redeemed; and that the injury which the adulterer inflicted could not be redressed. It had degraded and disgraced the legislature; it had been contrary to morals, virtue, and religion; it had been the encouragement of vice that the House had interfered in favour of adultery, and had given law and licence to women to change their husbands at their discretion, with a marked partiality to the most profligate and such as had the least excuse, since the same interposition was not afforded to those who could palliate their offence by insisting on the misconduct of their husbands[r]. The ordinary law of the country was suspended, that a woman might be in a condition to complete a conduct founded in turpitude; or, in other words, that a woman who had violated her vow, confirmed by a solemn appeal to the Creator, should have licence to exhibit a mockery of heaven, by a new profanation of the same ceremony with the convicted partner of her guilt[s]. There were other arguments in favour of the measure. The increase of divorces and the accelerated ratio of their increase called for restraint[t]: nor was the measure subject to the charge of innovation. The Julian law had pronounced the man

[q] Master of the Rolls, (Sir W. Grant.) Mr. Wilberforce. [s] Lord Auckland. Bishops of London and Durham. [r] Lord Auckland; [t] Lord Auckland;

infamous who should marry an adulteress; and the proposed restriction of the intermarriage of the adulterer with the adulteress was established in the Canons of 1603, and by the law of Scotland, and was agreeable to the statute 1 Jac. I. c. 11.[u] More modern than the modern practice of parliamentary divorces was the allowance of the intermarriage of the offending parties, which had been assumed without authority, was still of questionable legality, and had been gradually acquiesced in against the real intention of these Bills, which had been designed for the relief of the injured party, and contained special clauses, allowing him to marry, and asserting the legitimacy of the issue of his marriage, without any similar provision in favour of the wife. The construction which had of late been put upon these Bills had been favourable to the designs of the seducer, and different measures, which had received the fullest concurrence of the House of Lords, had been suggested for the correction of the abuse. Bills of divorce and actions for criminal conversation notoriously originated in the grossest and most infamous collusion, in the practice of which the wife concealed the offences of the husband, that she might obtain lenity for the adulterer, and success to her own nefarious designs; and thus divorces were granted where they ought to be refused. The expence of these suits confined them to a particular class of society, whose vices they at once cherished and invidiously exposed. If the evils of the present administration of the law were not reformed, how-

[u] Bishop of Rochester; Lord Auckland.

ever the injury to the individual might be felt, it were better that the practice of divorce should be superseded altogether[x].

The argument against the intermarriage of the adulterer with the adulteress prevailed in the House of Lords, where the question was fully debated, but was rejected in the House of Commons at the end of the session, on the motion for the second reading, and with so much precipitance that the opposition was meditated even to the first reading of the Bill. Lord Auckland afterwards in a certain degree effected his purpose, by an order of the House of Lords to the following effect:

"Ordered: That no Bill grounded on a petition to this House to dissolve a marriage for the cause of adultery, and to enable the petitioner to marry again, shall be received by this House, unless a provision be inserted in such Bill, that it shall not be lawful for the person whose marriage with the petitioner shall be dissolved to intermarry with any offending party, on account of whose adultery with such person, it shall be therein enacted, that such marriage shall be dissolved: provided, that if at the time of exhibiting the said Bill such offending party or parties shall be dead, such provision as aforesaid shall not be inserted in the said Bill[y]."

The interest which these debates excited was strong, but evanescent, and followed by no practical effects. The attempt of Bishop Horsley to infer from the Scripture a direct prohibition of the marriage

[x] Lord Eldon; Lord Auckland; The Master of the Rolls; Hon. T. Erskine. [y] Woodfall's Parl. Rep. vol. li. p. 231.

of the adulterer with the adulteress, gave an advantage, of which the learned author of the *Nuptiæ Sacræ* did not fail to avail himself. Nothing approaching to the theory suggested in these pages was agitated in this temporary controversy, and no subsequent attempts have been made to improve or amend the law of divorce, which, although the question has been again and again before the legislature, remains without reform, and liable to the very strongest objections.

The divorce *a mensâ*, which suspends the intercourse without annulling the obligations of marriage, is one of the conditions, without which a parliamentary divorce cannot be obtained: and it is not the least inconsistency of the system, that this partial separation in the ecclesiastical courts is not granted, but in contemplation of the reconciliation of the parties, and upon the express condition that they shall not marry during the life of each other: but in the application for a parliamentary divorce, the husband is required to produce this conditional and limited divorce, as one of the grounds upon which he seeks permission to marry; in other words, he is required to acknowledge himself a married man, bound by a bond not to marry; and in this state he seeks a liberty of marriage, in direct contravention of his acknowledged relation, and of the bond which he is required to produce. The inconsistency of this practice is the natural result of the different principles upon which the ecclesiastical courts and the legislature proceed. The ecclesiastical courts, in conformity with the ancient practice, and with the strict interpretation of the scriptural rules; He

that marrieth a woman divorced committeth adultery; and, Those whom God hath joined together, let no man put asunder; hold the contract of marriage to be indissoluble, and therefore only grant a conditional separation and suspension of the obligations of marriage until the parties shall be reconciled: but the legislature, following the bad precedent of the Bill to enable Lord Roos to marry again, and biassed, it may be, by the arguments alleged in favour of the second marriage of the Marquis of Northampton, and recognizing the actual dissolution of the marriage by the adultery of one party, hold that marriage is not indissoluble, and conclude with declaring its dissolution in respect of the other party. Inveterate difference of opinion may have induced a fatal apathy to the true sense of Scripture on this doctrine; but it is obvious, that one or the other exposition is erroneous in principle, and unjust in the application. If the indissolubility of marriage is a precipitate inference from the Scriptures, the practice of the ecclesiastical courts should be enlarged, and the right of perfect divorce should be conceded to every man who has occasion to demand it: the bond of matrimony should be dissolved, not of favour but of right; the general principle should be avowed, and brought into general action. If there are doubts of the authority for this liberal principle, and dangers are apprehended from extending the dissolubility of marriage; the practice of Parliament calls for restraint; and no advantages should be given to individuals, which may not be claimed by the community. The legislature of a Christian country should not be disgraced by the palpable

contradiction of giving licence to marry, to a man, who presents himself in no other character than that of a married man, bound by his acknowledgment and by his bond not to marry; and of declaring marriage in a particular instance to be dissoluble and dissolved, which the language of an existing statute, and the whole tenor of the law, declare to be indissoluble. It is the boldest presumption to oppose a private act to the doctrine of the Church, from the very time of the apostles, and even from the first institution of marriage in paradise; and to give an effect to the law of man, which can claim no sanction from the law of God.

The act of the legislature in granting is not however more anomalous than the conduct of the individual who solicits the divorce. The terms of the contract of marriage endure as long as the parties both shall live, and until death shall part them; and the inconsistency of seeking the dissolution of such an engagement has been powerfully stated in reference to an application to the courts of Scotland. "It is impossible to overlook the anomalous situation in which the pursuer is apparently placed, with a reference to the action in which she now insists. The right of divorce, to whatever extent it may go, originates in the marriage contract. It forms a constituent part of that contract, and therefore, in every case of divorce the proceedings must necessarily be grounded on the previous fact of marriage. The pursuer founds her action upon a marriage contract, celebrated according to the forms prescribed by the English law, which, by the operation of that law, and by her own express agreement signified in the

very terms of the contract, is acknowledged to be indissoluble. Nevertheless, with a visible inconsistency, she calls upon this court to allow her a proof of alleged acts of adultery, to the effect that this English contract may be dissolved. Here it is obvious, that the conclusions of the pursuer's action are at complete variance with the premises on which it is laid. In drawing them, the pursuer plainly reprobates the very contract which she approbates; and it ought therefore to be considered, how far she can be permitted to act thus inconsistently; and whether, upon such premises, she is not barred *personali exceptione* from insisting in the present action to the extent of those conclusions[z]."

Doubts, which it would be disingenuous to conceal, but which do not demand a particular refutation, have been thrown on the doctrine of the indissolubility of marriage in England; and it has been said, that "whether marriage is by the English law indissoluble, according to the just sense and spirit of that term, is matter of great doubt. Perhaps the sole amount of what is expressed by the Canon is, that the power of dissolving that tie is not vested in the ordinary courts within England, nor is any procedure known to them, by which that object, even supposing it not forbidden by any more general maxim of the law, could be accomplished. That it was otherwise at a period not of the remotest antiquity, there is authority for believing. At all events it is certain that even now an English marriage may be dissolved by interposition of the legis-

[z] Fergusson, 319.

lative power, and that a proceeding for this purpose, originating in the application of private parties, is well known in that kingdom, which proves sufficiently that divorce, though it may not be demanded in England as an absolute right, is not held to be immoral in its purpose, or contrary to the principles acknowledged in the law of the land. When it is said, that the conditions of the marriage contract, expressed or legally implied, are inherent and unchangeable, and that this principle determines the present point, two mistakes are committed. It is forgot, in the first place, that the question is not as to a condition or right arising out of the contract, but as to a remedy for the breach and violation of it. In the second place it is forgot that the divorce is not an act of the parties, or either of them, but an act of the law. Parties make no provision as to the right of divorce, nor is the Scotch ritual different from the English in this respect: and even if they were inclined to forego a right like this, which is provided for the public benefit, they could not accomplish their purpose; they can neither create such a privilege in their favour, nor renounce it to their disadvantage[a]." In this statement, in which there is an obvious bias in favour of the Scotch law of marriage, and an attempt to reconcile the English law to that of the sister kingdom, it is admitted, that the indissolubility of marriage is the general law of England, and that its dissolubility is effected only by particular and private enactments, suspending and interrupting the general law. These acts are

[a] Quarterly Review, No. xlix. p. 258.

of no public interest or benefit, and can be obtained only on the petition of individuals, as matters of favour, not of right, which as they do not possess, and have no title to possess, it is true that they can neither forego nor renounce, but in the very solicitation of which they counteract their own matrimonial stipulations.

It has been clearly and concisely argued[b], that "the general law of the land, as administered in the ecclesiastical courts, is either conformable to Scripture, or it is not. If not, it should be altered: and then, as the courts would be authorized to dissolve marriage, there would be no occasion to go to Parliament for that purpose. If, on the other hand, the ecclesiastical law be conformable to Scripture, then the practice of Parliament is plainly wrong, and should be put an end to on that account. As things now stand the judicial and legislative authorities proceed on opposite principles, and the legislature assumes judicial functions for the express purpose of doing what according to the general law of the land, and according to Scripture, as expounded by that law, ought not be done at all."

The proceedings of the ecclesiastical courts are notoriously dilatory, and perplexed with forms, and libels, and interrogatories, and a technical phraseology, not very intelligible, nor very agreeable to the open and manly administration of the English law. There are no less than three ecclesiastical courts in which the question of divorce *a mensâ* may be tried,

[b] Essay "On Divorce Bills," copied from "the New Times" into the St. James's Chronicle, Sept. 29, 1824.

and the cause cannot even then be brought before the three branches of the legislature, unless a verdict has been obtained in the court of King's Bench. If justice require that the wrongs of the husband should be redressed by a divorce, the redress should be more expeditious, more within the reach of every man; there should be no occasion for the intervention of seven different tribunals. It is no libel upon the two Houses of Parliament to affirm that they are ill-adapted to the decision of these matters, claiming in their very constitution the rights of independent but concurrent jurisdiction; and in the numbers of either House, of more than six hundred commoners, and nearly four hundred peers, open to the influence of parties, passions, resentment, affection, interest, and connexions, and almost precluded from the temperate, dispassionate, and disinterested deliberation, the matured wisdom and experience, with which it is the pride of England that every judicial investigation is conducted before the competent tribunals.

Whether Bills of divorce be designed to confer a privilege or inflict a penalty, they fall under the offensive and unreasonable character of *ex-post-facto* laws, laws which nothing but the extreme necessity of the case can be thought to justify. They place the man and the woman in a condition in which they could not be placed without this interposition, or without reference to their previous conduct and condition; the relief always proceeds on the statement, that the woman has by her adulterous behaviour dissolved the bond of marriage on her part[c]:

[c] Fergusson, p. 413.

and however the ostensible object of these Bills may be to obtain to the innocent party a privilege of marrying again, they do in their very nature set the guilty party at liberty, permitting without a special restriction the intermarriage of even the adulterer and the adulteress, and giving unlimited licence in all other cases.

These Bills are also private Bills[d], acts of special interference and favour, suspending the ordinary operations of the law on motives not of public but of private good, effecting in the particular instance an entire revolution in the matrimonial law of the country, superseding the received distinction between divorces *a mensâ* and divorces *a vinculo*, and making marriage both voidable and void for causes succeeding the contract. It is vain to suppose that the English law does not deny the dissolubility of marriage, but restrict the court in which the dissolution shall be pronounced. The proceedings in Parliament relative to a divorce Bill are not to be viewed as of a judicial nature, or as if the legislature acted as a court of law, as the relief it affords cannot be obtained by judicial process in England. A law is in fact made for each particular case[e]. If the general law of the country is such as interferes with

[d] Whether as ex-post-facto laws, or as private Acts, Bills of divorce fall under the words in which Cicero (as quoted by Blackstone) describes the Roman privilegia: "Vetant leges sacratæ; vetant duodecim tabulæ leges privatis hominibus irrogari: id enim est privilegium. Nemo enim unquam tulit; nihil est crudelius; nihil perniciosius, nihil quod minus hæc civitas ferre potest."

[e] Fergusson, p. 413, 66.

the interests of individuals, and requires upon their account to be frequently suspended, reason demands a revision of the law, under which the benefit required may be placed within the reach of every man who desires and has occasion to possess it. That the marriage of private individuals should be dissolved by an Act of the legislature, and by no other means, "is a strange solecism in our institutions, and is the more remarkable because the rule does not apply to Scotch marriages, but only to English or Irish. The proper function of the legislative power is to frame general rules, and that of the judicial power to apply those rules to particular cases. The British Parliament indeed in the exercise of its sovereign authority does occasionally suspend a general rule by enacting an exception to it, which sort of enactments we call private Acts of Parliament: but these Acts should in all cases proceed upon grounds of public interest, and, except in respect to the Royal Family, it can rarely be said, that the public has any special interest in the dissolution of a particular marriage. If it be right that *that* marriage should be dissolved, it is right that all marriages under the same circumstances should be dissolved, and, if so, then the enactment should be general, and the application to the particular case should be made by the competent courts of law[f]."

The expence incurred in the several stages of obtaining a Bill of divorce, which has been known to amount to the sum of £10,000, and which subjects the law of England to the degrading imputation

[f] On Divorce Bills.

of "confining divorce to those who can pay for the expence of an Act of Parliament," necessarily restricts the relief which it affords to the wealthier classes of the community, and cannot be reduced to the accommodation of men in the ordinary circumstances of life, and, while it exposes the conduct of the rich and the noble to public discussion, it is felt to be a very invidious distinction. It was argued with respect to the special privilege of intermarriage, and the argument is applicable to the whole law of divorce, that if it be proper, moral, and religious, it should be a general law; that parliamentary interference should not exclusively favour the vices of high life, but be extended without reserve to the whole community. The result would be to create such anarchy of marriage as is recorded in the history of revolutionary France, where, within six or seven years, twenty thousand persons were divorced. The danger of such concession would be justly apprehended: and yet under the present system there is one law for the poor and one for the rich. The poor woman has an easy and summary remedy from the severities of a cruel husband, who is bound under penalties to keep the peace towards her: in another class of life the same remedy is obtained by the more expensive method of a divorce in the ecclesiastical courts. But the poor man, whose wife is an adulteress, must remain bound to her for life, because he cannot afford the expence of a divorce Bill; while there is nothing which restrains the rich man from applying to Parliament again and again, as often as his matrimonial engagements are unhappy, and as long as his fortune enables him to seek so

expensive a remedy. Thus there is a partiality in the law, in giving to the rich man a means of redress which the poor cannot obtain; and which, if it were dispensed at all, should be dispensed equally and fairly before the legal tribunals.

The manifest inconveniences and inequalities of the prevailing law of divorce have been acknowledged by great and good men; and four principal methods have been suggested for its amendment.

1. It was the intention of Cranmer to abolish the divorce *a mensâ*, and to make adultery and some other causes a ground of dissolving the marriage under certain restrictions.

2. It was the purport of the Bills of the Duke of Athol and the Bishop Barrington, to restrain the adulteress from contracting any marriage for a definite period.

3. It was the attempt of Lord Auckland, and of the valuable men who cooperated with him, to prohibit altogether the intermarriage of the adulterer and the adulteress.

4. It was proposed, with very general concurrence, and upon very high authority, to give new power to the ecclesiastical courts, or to establish a new tribunal, with competent powers for the decision of all questions relating to divorce, whether of suspending the intercourse or dissolving the bond of marriage.

All these suggestions are liable to the common objections founded on the doctrine of the indissolubility of marriage, and on the practical inexpedience of any such equalization of the law, as may increase the facilities of divorce. It has been the purpose of

these pages to point out the difficulties which embarrass the principle and practice of divorce; and it is now not premature to assert, that it is at least very doubtful, whether under any modification the practice of divorce can be reconciled with the authority of the Scriptures, or be restrained from producing the most fatal and pernicious effects. It has been attempted to shew that divorce is opposed to the necessary perpetuity implied in the divine institution of marriage; that it is not the intrinsic effect or proper consequence of adultery; that it was assumed at an unknown period, arbitrarily and without authority; that the practice of it among the Jews was placed under regulation and restraint, and was strongly condemned and discountenanced by the prophets. It has been shewn, that the practice of it for a long period was unknown to the Romans; that it was very slowly introduced, until in its unbridled licence it demonstrated, after the most perfect experiment, "that the liberty of divorce does not contribute to happiness and virtue." The Christian doctrine has also been examined, and shewn under any interpretation to be liable to restrictions; and reasons have been suggested for strong doubt and hesitation, whether Christ allowed divorce for adultery, or for any cause subsequent to a lawful and valid contract of marriage. These reasons have been compared with the history of the Christian doctrine of divorce at different periods, in which it appears, that nothing approaching to the dissolution of the bond of marriage was known before the subjection of the Church to the imperial law, and that that law gave rise to new causes and pretexts of divorce,

which underwent various modifications, without superseding the grand and constant tradition of the indissolubility of marriage. This principle has been effectually sustained in England both before and since the Reformation, in the distractions of which it was only partially disturbed; and it is approved by its occasional suspension under circumstances of the most striking inconsistency, and the most pernicious abuse. If this argument fails in proving the duty and expediency of superseding the whole law of divorce, it recommends the necessity of the most exact and scrupulous care and circumspection in its practical application, and adds new interest to the enquiry, whether there is not a better and a safer course than is prescribed by the existing law, a course which violates no principle, and opposes no authority; which holds no collusion or connivance with vice, and opens no path to meretricious union, to marriages originating in crime and consummated in equivocal and doubtful legality.

If, in an age of ease and luxury, the question of adultery and divorce should again be agitated, it will be of the first importance to fix the attention on the true doctrines of the indissolubility of marriage, and the criminal character of adultery. Let adultery be punished as a crime, and let its adequate punishment be the only redress which the injured party may expect, and which it shall be in the power of every man to obtain. The partial divorce *a mensâ* may then be superseded, except by the penal separation in cases of adultery, and in such cases of cruelty as may justify the interference of the courts, and the suspension of the ordinary intercourse of matrimony:

and the divorce *a vinculo*, or sentence of nullity of marriage, may be limited exclusively to those cases in which there was originally an impediment, sufficient to nullify and preclude the contract. When the criminal character of adultery is recognized, and followed by an appropriate severity of punishment, the difficulties, which embarrass the law and licence, the principle and practice of divorce, will be removed; and the true doctrine, that marriage, properly contracted, cannot be dissolved, will be restored to its primitive vigour and simplicity.

SECTION VI.

Private Acts of Separation.

THE primary end of marriage is the mutual consolation of the parties under the several cares and anxieties of life; and the subordinate end proposed in their mutual cohabitation, is the religious education of the offspring. The most effectual provision was made for the accomplishment of these important purposes, when it seemed good to the divine wisdom to ordain, that the man should cleave unto his wife, and they two should be one flesh, incorporated by an unity, which nothing in this world should be worthy to dissolve.

Founded in the divine institution of marriage, and on a correct view of the real condition of human nature, is the benevolent and considerate precept delivered by the apostle, in reference to the discipline which prevailed in the apostolic age: Defraud not one the other, except it be with consent for a time, that ye may give yourselves to fasting and prayer, and come together again, that Satan tempt you not for your incontinency[a]. In the earliest comment which is extant upon this text, it is justly remarked, that the apostle adds, *By consent*, that it may not be in the power of either party to dissolve the marriage; and that he limits the separation *for a time*, that the parties, in imposing a restraint upon them-

[a] 1 Cor. vii. 5.

selves, may be free from the temptation to adultery. . . . . Marriage has its proper offices and duties excelling in the Lord, the care of the children and the wife: and every man who would be perfect in respect of marriage, will make it his first object to fulfil the proper duties of the conjugal union, in maintaining a prudent care of the common household[b]. It is obvious to the most ordinary reader, that the apostle allows no separation, except on the conditions that it be with consent; that it be for a time only; that it be for the performance of specified duties; and that it be with the intention of coming together again, when those duties shall be fulfilled. Such a suspension of the matrimonial intercourse was, at a very early period, held to be not a dissolution of marriage, but a furtherance of piety[c]: but separation upon other conditions was pronounced by the apostle, a privation of the duties which the one owes to the other, and a strong temptation to unlawful indulgence.

There are but too many effects which this matrimonial privation may be shewn to produce. There will be the want of mutual conversation, advice, instruction, exhortation to duty, confirmation in faith, and the mutual elevation of heavenly hope, which becomes those who are heirs together of the grace of life: there will be the want of consolation in sorrow, and of protection in danger; and there will be the want of mutual assistance in the government of the family, and especially in the necessary disci-

[b] Clem. Alex. Strom. l. ii. s. 12. [c] Orig. Com. in Matth. tom. xiv. s. 2.

pline and instruction of the children, whose minds are not to be formed to Christian virtue, but by the authority of a father's fear, and the affectionate assiduity of a mother's love. When the mutual cohabitation, which the Deity has ordained, is superseded, the wisdom of the provision will receive a fatal illustration from the temptation which follows its neglect. The parties, formed for a state of mutual dependence, are prone to entertain a false sense of independence: they turn for consolation, not to each other, but to themselves; there is no more conformity in their wills; their views are directed to different pursuits; they seek for other helps than those which nature has provided, in the government of their children; their hearts are open to every emotion of distrust, of jealousy, of suspicion, and resentment; the love which is cherished by attention, and the passion which is soothed by forbearance, is in absence hardened to indifference, or exasperated to aversion: the whole order of marriage is inverted, and the conjugal union, which was designed by the divine benevolence for the alleviation of domestic care, is loaded by human folly with the heaviest of troubles and the worst of sins.

If the blessing of marriage is thus destroyed by occasional separation, it is not unreasonable to suppose that judicial and penal consequences may follow that which is designed to be permanent; when the husband and the wife, who are appointed to cleave unto each other, and to be one, presume by a private act of their own to separate from each other, and to be two. The state of celibacy, the state of marriage, and the state of widowhood, are all natural states,

easily understood, and easily reconciled with the law and appointment of God, and with the hope of his blessing: but in the state of a man and wife living separately from each other, there is something unnatural; there is a contravention of the divine appointment; there is a resistance of the divine means of conveying good to man. In the very act of separation, the parties presume on possessing a better knowledge of their nature and condition in the world than the divine Author of their being, who saw that it was not good that the man should be alone, and therefore made an help meet for him, and ordained that he should cleave unto his wife[d]: they affect other help than he hath provided for the relief of their infirmity; they throw themselves upon resources which cannot avail them; they rush into a state of delicacy, of difficulty, of danger, and temptation, from which it is hard to escape; they abandon at once the duties which they owe to God and to each other; and, whatever be the terms or motives of separation, they betray the most hardened indifference to their common children, whom, as married parents, they are bound by every consideration of law, of reason, and religion, to train for a godly seed in the nurture and admonition of the Lord. It is indeed hardly possible to conceive an act of more unfeeling or more unprincipled depravity, than that which is displayed by a parent, who, in a deed of separation, defines the terms upon which the children shall be separated from one or other of their common parents, and disposes of them with the same heartless

[d] Gen. ii. 18, 21, 24.

unconcern as he disposes of any part of his property or his furniture. What is the mother who consents, or what is the father who proposes, to alienate a natural right in the instruction of his own offspring? The duties which the parent owes to his child, the natural affection which he feels, and the natural hope which he cherishes in his behalf, the compunctious visitings of nature, should prevail over every difference which can possibly arise in the trials of domestic life, and restrain the heart from conceiving, and the hand from executing, the deed which not only separates the husband from the wife, but deprives the child of the common protection which by nature he is entitled to possess.

But it will be asked, Have not voluntary separations received the sanction not only of heathen practice, but of a divine institution and law? The fact is not denied; and let all the weight be given to the precedents which they are worthy to claim. It is not necessary to repeat the frivolous causes for which a permanent divorce was allowed in the heathen world: but be it remembered, that these divorces, however vicious in principle, were definitive in effect; there was no anomalous state in which at the same time there was and was not a marriage; the man and the woman once separated were free to marry whom they would; and the education of the children was no very anxious care of the heathen, it never depended on the mutual cooperation of both the parents. Nor was there more anomaly in the divorces permitted under the Jewish law, of which the very distinguishing character was, that they were irrevocable. When the man had written the bill of

divorcement, and given it to the woman, she might be another man's wife: but if her second husband, or any other succeeding husband, should divorce her, or should die, a former husband, who had divorced her, might not take her again to be his wife after that she is defiled, for that is abomination to the Lord. But under the Christian scheme all this permissive law of divorcement is abolished. With the exception of the single case of fornication, whether that term means adultery, or incestuous and prohibited marriage, he that putteth away his wife causeth her to commit adultery, and he that putteth her away and marrieth another committeth adultery. In virtue of the indissoluble nature of marriage, which Christ has restored to a conformity with the primitive institution, the parties separating themselves are in this anomalous state: they are divorced, as far as they can be divorced by the act of their own will, but they are nevertheless married by the force of the divine institution, and of a corresponding state of national law, which does not allow divorce. Under these circumstances they cannot attain the perfect and permanent privilege of the ancient divorce. They may give to each other, as far as their power extends, a bill of divorcement, but that bill is in its very nature invalid, and may be revoked; and thus having as they presume a discretional power of renouncing and recalling each other, they exceed the licence of any law of divorce which was ever known to the heathen or the Jew.

The mind of one of the most eminent of the primitive fathers was in doubt, why our Lord had not said, Let no man divorce his wife except for

fornication: but had rather said, If a man shall divorce his wife, except it be for fornication, he causes her to commit adultery. He assumes that it will not be denied, that a man in divorcing his wife who is not guilty of adultery, does, as far as lies in his power, give her occasion to commit adultery; for if, while her husband lives, she shall be called an adulteress, if she live with another man, the husband who divorces her, in giving her privilege of marrying again, causes her to commit adultery. He proceeds to affirm that there are many other pretexts besides divorce, by which the husband may cause the wife to commit adultery, and he attributes this effect especially to the man who exercises no control over the conduct and company of his wife, and to him, who, without divorcing his wife, separates himself from her, and neglects her; and he expresses a doubt, whether the man who is thus negligent of his wife, whatever may be his pretence, is not more reprehensible than even the man who divorces his wife for other causes than fornication[e].

Hilary also, in his comment on the text, maintains, that our Lord, in promoting equity among all parties, commanded the wife to remain in conjugal peace, and that the faith of the Gospel had not only imposed upon the husband a love of peace, but imputed to him the guilt of constraining his wife to commit adultery, if, from the necessity of leaving him, she is placed in a condition to marry another; and that he allows no cause of dissolving the mar-

[e] Orig. Comm. in Matt. tom. xiv. s. 24.

riage but that which would contaminate the husband, through the society of an abandoned woman[f].

These ancient commentaries afford no sanction to private acts of separation, under the Christian law of marriage and divorce, and they are calculated to counteract the opinion, that the law of divorce, delivered by our Lord, can only be interpreted with reference to the law of divorce previously existing among the Jews, and that the offence of the husband in causing the wife to commit adultery was especially restricted to a state of law which permitted the divorced woman to be married again. In accordance with this opinion it has been especially urged, that the husband caused the woman "to commit adultery *by enabling her to marry;*" that "there is no mention, no hint, no intimation, that the sin of the husband would consist in driving his wife to incontinence;" that "the adultery, and the only adultery, which this bill of divorcement would lead her to commit, consisted in her marrying another man under the sanction of this Bill;" that "there is no mention made of private separations independent of this liberty" of second marriage, "no mention of incontinence as the effect of such separation[g]."

In respect of the law of marriage, and of several other provisions, our Lord adverts to the practice which at the time prevailed among the Jews for the purpose of condemning and superseding it: and then introduces his own law, which he means to

[f] Hilar. Comm. in Matt. v. 32.

[g] See Chr. Remembr. vol. iii. p. 18, 19.

establish universally and for ever. The old law in respect of marriage was; Whosoever shall put away his wife, let him give her a writing of divorcement. This divorce, both in the spirit and in the form, our Lord abolishes, by adding; But I say unto you, Whosoever shall put away his wife causes her to commit adultery. The clause of exception is omitted, as not required in the present argument, which relates to the extent of the general law, independent of the particular exception. Now the law which Christ repealed was particularly that of the Jews; the law which he recommended was to be the law of all Christians to the end of time: and as lawful divorce was restricted to the single case of fornication, the prohibition of divorce in other cases was unnecessary, or contemplated some divorce in its cause more venial, and in its operation more restricted. The prohibition of divorce is also so far from being limited to the Jewish bill of divorcement, which was given by the husband only, that the terms under which the divorce is expressed, and which signify[h]

[h] "In considering the text of St. Matt. v. 32, we may fairly leave out the subject of Jewish divorce, as well as the article of the wife's marrying again: we may assert, that, according to the tenour of the Gospel, a private separation is virtually a divorce. That the verb *απολυω*, which literally signifies *to release* or *let loose*, is not necessarily synonymous with giving a bill of divorcement, even in this verse of St. Matthew, appears from the Greek of St. Mark x. 12, where the wife is made the subject and the husband the object of the same verb. I do not however deny, that it may be of kindred signification with *εξαποστελλω*, in the LXX version of Deut. xxiv. 1. or with *εκβαλλω* in the Apostolical Canons, and other writings in the early ages of Christianity. Vide Bevereg. Annot. apud Coteler. Pat. Apostol. tom. i. 459.

no more than a discharge or release from engagements, are appropriated to the wife as well as to the husband, and the privilege which is equally denied to both is a privilege which must have been possessed by both.

The doctrine of our Lord is founded on the revived doctrine of the indissoluble nature of marriage, in virtue of which the woman during the life of her husband, although she be nominally separated from him, and assume a licence of marrying again, cannot connect herself with any other man than her husband during his life, without incurring the guilt of adultery; and it is the doctrine not only of the law of England, but of the primitive Church, that marriage under such circumstances is mere pretence; and if she be living apart from her husband the guilt of the adultery which she commits is on the same

But though it may be taken as an adjunct or as a consequence of divorce, we may still be allowed to consider its force in any other application. If I understand rightly the doctrine of our Saviour on the subject of marriage, his intention, notwithstanding any practices as to divorce among Christians in after ages, was to restore the institution to its original purity in the union of two persons as one flesh, and to assert accordingly the *equality* of husband and wife in the *conjugal character*, without prejudice to *the husband's authority as the head of the family*. Hence, in Mark x. the εαν απολυση predicated of the husband is also predicated of the wife, as is μη αφιεται, 1 Cor. vii. 12, 13. The power over each other's bodies is in both places tacitly acknowledged to be mutual, without reference either to Jewish or heathen usages as to the party who might legally sue for a divorce. The right of divorce is *recognized* in the wife as well as in the husband; or, to speak more consistently with the temper of our holy religion, it is equally *denied* to both." Letter of "Rusticus," published in the True Briton, Nov. 30, 1820.

authority imputed to the husband, on the ground of his failing in those attentions which were necessary to prevent it. In the cases alleged by Origen, the same charge is brought against the negligent husband of a guilty wife, who is not separated from him, and has therefore no pretence for a second marriage. There are many cases also in which the woman who is separated from her husband not only resorts to no second marriage, but lives in virtue and chastity: but is her virtue and forbearance the acquittal of her husband's guilt in putting her away? Is the divorcing husband innocent, because the divorced wife is not guilty? Whether the woman does or does not abuse the occasion which is offered, the man, by the deed of divorcement, by the act of separation, has done all which lies in his power to involve her in shame and sin, and may be charged with all the evil which she meditates or commits; and his conduct is so independent of the conduct of the woman, that it can only be interpreted of the temptation or occasion which is offered, and may be imputed without any hypothesis of the marriage of the woman.

It is commonly supposed, that the woman does marry. The man who shall put away his wife, "in causâ est, ut alii nubendo, adulterium committat," as Schleusner translates the words with the usual interpolation: but is there any necessity, any authority, for the supposition of the marriage of the woman? If the hypothesis were necessary, might it not have been expressed, as it is expressed in the supposed parallel case of the woman who puts away her husband? And is not the clause under this

interpretation of the same import with that which follows, that the man who marries her that is divorced committeth adultery? There is danger in admitting any interpolations which are not required to complete the sense of the sacred records: and in the four several cases which are put by our Lord, there is a nicety of distinction which precludes the necessity of any interpolation. There are the several cases; 1. of the man who divorces his wife, and thus causes her to commit adultery; 2. of the man who actually marries a divorced woman and committeth adultery with her, (and she with him, because she is another man's wife:) 3. that of the man who puts away his wife and marries another and commits adultery, being the husband of another woman; 4. that of the woman who shall put away her husband and marry another and commits adultery, because she is another man's wife. In this enumeration of the cases, the first is distinguished from the others by the omission of all mention of marriage, and the interpolation which is contended for cannot be admitted, without destroying the distinguishing peculiarity of the case. The criminal act of the husband in putting away his wife, (and the woman who deserts her husband is reciprocally liable to the same charge,) is, that he causes his wife to commit adultery by throwing a strong temptation in her way, or, in the language of the apostle, by suffering Satan to tempt them through their incontinence. The Christian law admits no separation of the parties; it supposes them to be joined together by God, and, in virtue of this divinely instituted union, suffers neither themselves nor any other parties to

put them asunder. A voluntary separation is virtually a divorce, a discharge from conjugal rights and duties, in opposition to the law of Christ and of his apostle, who again and again insist that the man shall not put away his wife, nor the wife her husband. The only case of exception is that of a believer married to an unbeliever; in which the right of divorce is dependent on the invalidity of the original marriage, and the force of the Christian rule is therefore not abated. If the unbeliever consented to continue the union, the believer was not suffered to make objections, or to dissolve it, under pretence of religion: if the unbeliever desired to break the connexion, the Christian law had no power to restrain him, and the believer was suffered to separate from him, and released from her conjugal engagements. In every other case there was an absolute prohibition of permanent separation: occasional separation was permitted only upon condition of consent, for a time, and with the intention of returning to the conjugal duties.

These voluntary and private separations are not only subversive of the true end and purpose of marriage, an anomalous state, unsanctioned by any precedent, and immediately opposed to the Christian law of marriage; but they are violations of the particular engagements contracted by every man who marries in England. The question is not what might be, but what actually are, the terms and conditions of the matrimonial stipulation; in which it will not be pretended that there is any ambiguity, any want of distinctness, any room for mental reserve or equivocation. In the Office for the So-

lemnization of Matrimony, the parties respectively give their troth either to other, that the husband shall love and cherish the wife; that the woman shall love, honour, and obey her husband; and that forsaking all other, they shall keep them the husband to the wife, and the wife to the husband, so long as they both shall live, and until death shall part them. It is obvious, that this is an engagement which cannot be kept in a state of separation; that the man cannot redeem his promise of cherishing his wife, while he thrusts her from his society; that the woman cannot fulfil her duty of love, honour, and obedience, to a man from whom she consents, or is constrained, to live at a distance, and with whom she is not permitted to hold the ordinary intercourse of domestic life. They will not pretend to assume to themselves or to convey to each other a licence not to forsake all other: but does not the same engagement which binds them to forsake all other, pledge them also to keep each to the other? And is it not as reasonable and as consistent with their conjugal promise, that husbands and wives should not forsake the company of others, as that they should not keep to each other? If married persons would reflect upon the engagements of their marriage, and regard those engagements in the character of a solemn oath and covenant, they would be ashamed of incurring the guilt of perjury by the neglect of their reciprocal duties. If they would consider that the pledge is extended to their lives' end, so long as they both shall live, and until death shall part them, they would have a prudent care of disturbing the peace of an indissoluble union, which involves a perpetuity of mutual

forbearance or of mutual strife: nor if they had the fear of God in their hearts, if they thought of him who is the present witness of the covenant which a man makes with the wife of his youth, would they venture to violate their religious duties, or to contemplate the terms of that putting away, of which the Lord hath declared his abhorrence. It is with great propriety that the Scripture says that woman was given to man for an help by God. It is evident, therefore, that she should make it her choice to mitigate with reason and persuasion all the inconveniences which she sustains from her husband; and if he is perverse and uncomplying, she will endeavour, as far as is in human nature, to prove herself blameless; conceiving the Deity to be her help, her guide, her governor, and saviour; making righteousness and moderation her work, and the love of God the end of all her actions[i]. The same forbearance is due from both parties; and if it is regulated by the same principle, will induce a patience of any sorrow, in preference to the very thought of separation. Forsaking all other, I will keep me only unto thee, is the promise of marriage: I will forsake thee, and not keep me unto thee, are the terms of separation between a man and his wife. Are these things consistent in the judgment of the man of sense? Will the man of honour approve the falsehood which they involve? Will the religious man not fear the judgment which they challenge? The Lord hath been witness between thee and the wife of thy youth, against whom thou hast dealt treacherously: yet she

[i] Cl. Alex. Strom. l. iv. s. 20.

is thy companion and the wife of thy covenant. . . . Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth: for the Lord, the God of Israel, saith that he hateth putting away[k].

The separations, which are thus contrary to all religious considerations, are illegal, and happily destitute of all sanction of human law. Upon whatever ground these deeds of separation proceed, or in whatever terms they are drawn up, they are liable to be superseded by an action for the restitution of conjugal rights.

"The indissolubility of marriage rendering it impossible for parties lawfully to release each other from their reciprocal duties, the spiritual courts are authorized, at the instance of either, to compel mutual cohabitation, to which no deed of separation can be pleaded in bar, any more than it can in suits for adultery, such an instrument being an illegal contract, directly contrary to the obligations already entered into by the parties, to live together until death shall part them; an obligation on which the solemnities of religion and civil society have stamped a binding authority, and from which parties may not release themselves, by any private act of their own, for causes which the law has not pronounced sufficient, or sufficiently proved[l]."

There is no doubt, that these suits for the restitution of conjugal rights are liable to abuse; but the very abuse may be alleged in proof of the illegality

[k] Mal. ii. 15, 16.

[l] Poynter's Doctr. and Prac. of the Eccl. Courts, p. 88.

and inefficiency of the deeds which they are designed to rescind. Deeds of separation commonly originate in offences comparatively trivial; in difference of temper; in frequent strife; in mutual aversion; but even in the strongest case which can be conceived, that of a husband separating from a wife, on a well-founded suspicion of her criminality, what is the result? The woman for a time consents to the separation, but under the desire of an increased stipend, or any other improper motive, she is entitled to demand a restitution of her rights; and if the husband cannot prove her adultery, he must either assent to her demand, or comply with the terms which she proposes, as an equivalent for cohabitation. The deed of separation is illegal; and although the woman has consented to it, her consent is void, and may be recalled. The suit for restitution can only be counteracted by proof of adultery, or by proof of cruelty[m]. The principle upon which the civil courts allow the woman to retract her consent, and upon which it has been argued that the contract of a married woman is not only voidable but void, is, that she ought not to contract to bind her husband, on account of his superiority over her; nor herself, because she has not the administration of any property[n]. The converse of this principle would seem to bind the husband to the full measure of his bond: and it has been argued against him, that having entered into articles of separation with his wife, he has no more control over her, no more

[m] Poynter's Doctr. and Prac. of the Eccl. Courts, p. 89.

[n] 1 Term Reports, 5. Corbett v. Poelnitz.

power to reclaim her without her consent. In the case of the king against Mary Mead, (1 Burr. 542.) "where the wife was brought up on a return to a *habeas corpus*, sued out at the instance of the husband, the court held such an agreement as this 'to be a formal renunciation, by the husband, of his marital right to seize her or force her back to live with him;' and the husband was ordered not to molest her on her return home to her friends[o]."

It is certain that the ancient law was so far from entertaining the doctrine of a separate maintenance, which has been introduced by the corrupt fashion of modern times, that it held, that in marriage there was so perfect an incorporation and union of the parties, as to render them incapable of acting separately, or of entering into contract with each other. In reverting to the principles of the older law, and in overturning some recent decisions tending to establish the position, that a married woman, living apart from her husband, and having a separate maintenance, may contract and be sued as a single woman; Lord Kenyon reconciled the soundest principles of the law with the plainest rules of social virtue, in a judgment not hastily formed, but after the case had been argued twice before all the judges; who after a very full consideration were agreed that the position could not be supported.

"The ground on which the plaintiff in this case rests his claim, is an agreement between the defendant and her husband to live separate and apart from each other; that is, a contract supposed to be

[o] 1 Term Reports, 90. See also p. 358.

made between two parties, who, according to the text of Littleton, s. 168. being in law but one person, are on that account unable to contract with each other; and if the foundation fail, the consequence is, that the whole superstructure must also fail. This difficulty meets the plaintiff *in limine*. If it did not, and the parties were competent to contract at all, it would then become material to consider how far a compact would be valid, which has for its object the contravention of the general policy of the law in settling the relations of domestic life, which the public is interested to preserve; and which, without dissolving the bond of marriage, would place the parties in some respects in the condition of being single, and leave them in others subject to the consequences of being married; and which would introduce all the confusion and inconvenience which must necessarily result from so anomalous and mixed a character. In the course of the argument some of these difficulties were pointed out, and it was asked, Whether, after such an agreement as this, the temporal courts could prohibit, if either party were to sue in the ecclesiastical courts for the restitution of conjugal rights? Whether the wife, if she committed a felony in the presence of her husband, would be liable to conviction? Whether they could be witnesses for and against each other? Whether they could sue and take each other in execution?—And many other cases will occur to every one, to which it will be impossible to give a satisfactory answer. For instance, it may be asked, How it can be in the power of any persons, by their private agreement, to alter the character and con-

dition, which by law results from the state of marriage, while it subsists, and from thence to infer rights of action and legal responsibilities, as consequences following from such alteration of character and condition? Or how any power short of that of the legislature can change that which by the common law of the land is established as the course of judicial proceedings.

"The argument in favour of the plaintiff rested on this position only as a principle, viz. that where the husband ceases to be the protector of his wife, and is not liable to have any claim made on him for her support and maintenance, it necessarily follows, that she herself must be her own protectress, make contracts for herself, and be responsible for them. But if this were a necessary consequence it would hold in all cases; but that is not so: for if a woman should elope from her husband, withdraw herself from his protection, and live in adultery, he is not by law liable to answer for her necessaries, and no case has decided that a woman is. A wife, living apart from her husband, who has property secured to her own separate use, must apply that property to her support as her occasions may call for it: and if those who know her condition, instead of requiring immediate payment, give credit to her, they have no greater reason to complain of not being able to sue her, than others, who have nothing to confide in but the honour of those whom they trust. From the incapacity of a married woman to contract or to possess personal property, which may be the subject of contract, men and their wives desirous of living separate have found it necessary to have recourse to

the intervention of trustees, to whom the property, of which it is intended that she shall have the disposition, may vest, uncontrolled by the rights of the husband, and with whom he may contract for her benefit: but in such property the woman herself acquires no legal interest whatever. Of such trusts courts of equity alone can take notice: they can cause the fund to be brought before them to be applied as in justice it ought to be, and in those courts the creditor must prefer his claim.

"The earliest cases on this subject proceed on the ground of the husband being considered as dead, and the woman as being in a state of widowhood, or as being divorced *a vinculo matrimonii* . . . . and, until the cases of *Ringstead* v. *Lady Lanesborough; Barwell* v. *Brooks;* and some subsequent cases, which we wished to have reconsidered, we find no authority in the books to shew that a man and his wife can by agreement between themselves change their legal capacities and characters; or that a woman may be sued as a *fême sole*, while the relation of marriage subsists, and she and her husband are living in this kingdom.

"For these reasons our opinion, in conformity with that of all the judges who heard the last argument, is, that there must be judgment for the defendant.

"His Lordship afterwards desired that it might be understood, that the late Lord Chief Justice Eyre, who heard the first argument entirely concurred in this opinion[p]."

[p] 8 Term Reports, 545. Marshall against Rutton.

It is of the highest importance to the interests of trade, and in a commercial country, that this decision should be maintained, as it is natural for the tradesman to assume, that a married woman is living with her husband, and not in his power to ascertain upon what terms she is separated from her husband. At the same time, when the law, forsaking its usual equity, becomes partial, and manifestly adverse to the interests of the husband in the construction of these articles of separation, it is not unreasonable to conclude, that it entertains a secret abhorrence of these deeds, and shrinks from the responsibility of affirming their validity. There are two other cases, besides those which have been alleged, of the same disposition of the courts to make a distinction between these deeds, and to remove them from the ordinary course of the law. When the husband and wife have been divorced *a mensâ et thoro*, by sentence of the ecclesiastical court, children born during the separation are bastards, because the law will presume the husband and wife conformable to the sentence of separation, unless access be proved: but if the husband and wife consent by their own act to live separate, the children are presumed legitimate, till non-access be shewn, for the law will suppose access unless the negative be proved, and the burthen of the proof is cast upon the husband of the mother, or his representatives[q]. The law, in thus supposing the cohabitation of parties not legally divorced, with the legitimacy of their issue, and

[q] 1 Bl. Comm. c. 16. 1 Burn's Justice, 242. 5 Term Reports, 358.

their consequent right to maintenance, and their capacity of inheriting the estate of the presumed father, actually overlooks, and virtually refuses to recognize, the voluntary separation by agreement.

Again; it is an old principle and rule of law, that a woman eloping from her husband and living with the adulterer forfeits her dower: but an act of adultery, committed while the parties are living apart under a deed of separation, does not forfeit the annuity settled by that deed, and accepted in lieu of jointure, thirds, and dower. The plea of adultery is not sufficient to invalidate the deed, "upon the ground, that if the husband, when executing such a deed as this, thinks proper to enter into an unqualified covenant, he must be bound by it. If he wished to make the commission of adultery a condition of paying the annuity to his wife, he should have covenanted to pay it, *quamdiu casta vixerit*[r]." But would the woman under any circumstances, whether in assenting to the deed she was conscious of a virtuous or a criminal intention, have been persuaded to subscribe to such a condition? Would the courts have lent their sanction to such a deed, and have deprived the woman of all right to maintenance for the violation of so partial a rule? Or what would have been the proof of adultery, conditionally required to vitiate a deed, of which the very existence has been fatal to actions for damages for criminal conversation?

This is another objection to the validity of deeds of separation, and another proof of the partiality of

[r] 2 Barnewall and Cresswell's Reports. Jee v. Thurlow.

the law in the construction of them, for which the public is principally indebted to the unsophisticated learning of Lord Kenyon. In the case of Weeden v. Timbrell he had directed the plaintiff to be nonsuited, on a conviction that the gist of the action lay in the loss of the wife's society, and not in the criminal act or assault upon the person of the wife, which was the argument of the plaintiff, and to which it was replied, that if it were so the husband could not maintain the action in his own name only, but must also have joined his wife. In a former case, Warrington v. Brown, the jury, in opposition to the direction of Lord Mansfield, had drawn the contrary conclusion, and Lord Kenyon, in delivering his judgment, naturally adverted to that case. It is so important to establish the position, that "no action for criminal conversation can be brought for any act of adultery after a separation between husband and wife," that no apology will be required for reciting at length the opinions of Lord Kenyon and Mr. Justice Ashhurst, with whom Justice Buller coincided.

"Lord Kenyon, Ch. J. On the trial of this case I understood that there was no decision on the subject; on the principle, I thought that the action would not lie, and nonsuited the plaintiff. If the case before Lord Mansfield had been decided in the manner now supposed, it would have had very considerable weight with me: but, according to a note of that case with which I have been furnished, it appears, that his Lordship's opinion was against the action, for he said, that it was a new experiment; that permitting such an action to be maintained

would be attended with very mischievous consequences; and that the gist of the action was the loss of the comfort and society of the plaintiff's wife. It is true that the jury gave a verdict for the plaintiff, with £20 damages; but that was certainly against the opinion of the judge: perhaps the smallness of the damages and the improper conduct of the defendant in that case were the reasons why no motion was made for a new trial. It is material to consider what is the gist of this action: the plaintiff contends that it is a criminal act; but that I deny. I think it is a civil action brought to recover satisfaction for a civil injury done to the husband, and not to punish the defendant for having broken the laws of morality and decency. But what injury is done to the plaintiff, who has voluntary relinquished his wife? It cannot be said, that he is deprived of the comfort and society of his wife. I can see the immorality of the defendant's conduct in as strong a light as any person; but still this action must be confined within legal limits. This is like the case of an action by the father for the loss of service of his child: in which, however the parent may feel for the violation of his daughter's chastity, it is clear that no action can be maintained, unless some evidence be given that the daughter performed some acts of service for the father. This is not like the instance put[s] of temporary separation from the wife;

[s] It had been argued by the plaintiff's counsel; "Suppose a separation by the husband's being in a different country: could it be contended that no action was maintainable, because he could not sustain any present loss of comfort? Or if the separa-

in such case the wife still continues within the protection of the husband, which she does not here. Before I saw the opinion of Lord Mansfield in the case before him I thought that this action could not be supported; and I am now confirmed by what his Lordship there said, because that which is the gist of the action fails.

" Ashhurst J. The gist of this action is the loss of the comfort and society of the plaintiff's wife: that is always inserted in declarations of this kind, as a material and substantial allegation, and the forms of pleading are evidence of the law. Then, taking that as the principle, it follows, that if the husband separate himself from his wife, he cannot be said to be deprived of that comfort and society which he has before renounced. Under the circumstances of this case it cannot be said, that the plaintiff has sustained the injury which he has imputed to the defendant. And the opinion of Lord Mansfield in the case cited coincides with ours. The principle of this case is like that mentioned of debauching the plaintiff's daughter, in which the plaintiff must give some proofs of acts of service done by her, in order to support the allegation in the declaration: very slight evidence indeed is sufficient, but still it is necessary to give some.

" Buller J. of the same opinion.

" Grose J. This is considered as an action on the case, and not of trespass, and the plaintiff is

tion were premeditated only for a certain time, at the end of which the parties proposed to live together again, would that defeat the action?"

entitled to full costs, though he recover less than 40s.[t]

[t] 5 Term Reports, 357. The case of Chambers v. Caulfield was argued, at the desire of Lord Ellenborough, on the general point, whether the mere fact of the separation between husband and wife by deed were such an absolute renunciation of his marital rights as precluded the husband from maintaining an action for the seduction of his wife; saying, that he did not consider that case as concluded by the decision in Weeden v. Timbrell. In this case there was a deed containing clauses, requiring the consent of trustees to the separation, and providing that in the event of such allowed separation, certain of the children should live with, and be educated by, the mother, who should also have access to the other children in the event of illness requiring the attention of a mother. But it did not appear that the wife had the consent of trustees to the separation, and therefore she was living apart from her husband without his consent: and if the trustees had consented to the separation, still the husband had not by the terms of the deed given up all claim to be derived from her comfort, society, and assistance. "The consequence of which is," as was affirmed by Lord Ellenborough, "that the case of Weeden v. Timbrell, allowing it the fullest effect according to the terms, cannot be considered as authority against the plaintiff in the present action." 6 East, 256. In the case of Barker v. Potts, the Chief Justice Dallas admitted that the judgment of Lord Kenyon in Weeden v. Timbrell had been sanctioned by the three most learned judges, who then sat with him in the court of King's Bench; that although the propriety of that decision had been doubted, it had not been reversed; that, without saying what might be his decision upon more mature deliberation, his present opinion was, that the deed of separation did not in all cases bar the husband's right of action for adultery; that the legality of deeds of separation had been disputed among the highest characters of the law, and he wished that a more full decision should be given to the question; that he could not understand upon what principle of law or reason a civil contract solemnized by a religious ceremony could be set aside by the parties without the intervention of the courts;

The weight of these opinions was duly appreciated in the House of Lords, where the most distinguished lawyers were unanimous in asserting the vicious nature of deeds of separation, and in pronouncing the existence of those Bills incompatible with the attainment of Bills of divorce, both by themselves and by the consequent want of the requisite verdict in the court of King's Bench. In the proceedings on Esten's divorce Bill, it was shewn that the husband had placed himself in a condition not to be entitled to the special interposition of the legislature to relieve him from consequences which his own conduct seemed to have facilitated, by leaving his wife under equivocal protection, and under articles of separation. Mr. Esten had been nonsuited under the direction of Lord Kenyon on proof of the articles of separation between the parties: and it was observed by the Lord Chancellor of the day, in answer to the arguments of counsel; "With regard to courts of law taking cognizance of deeds of separation, we know not of any such cognizance being in their power, as no law can make deeds of separation legal, or enable persons once married to get rid of the solemn stipulations they incurred by that act, short of a regular Bill of divorce under the sanction of the legislature." After evidence had been heard, he observed again, that the articles of separation formed an insuperable bar to any divorce, and ren-

that as a separation had been once held a bar to an action of this kind, it should undoubtedly weigh in considering the amount of damages; and that he was willing to reserve the point raised on the deed of separation. Times, Dec. 19, 1822.

dered it the duty of the House to reject the application, which was instantly rejected[u].

In the orders afterwards prepared by the Lord Chancellor for the regulation of the House in respect of Bills of divorce, it was provided, that the husband should be subject to an examination, as upon other points, so especially "whether at the time of the adultery his wife was by deed or otherwise by his consent living separate and apart from him, and released by him, as far as in him lay, from her conjugal duty; or whether she was at the time of such adultery cohabiting with him, and under the protection and authority of him as her husband[x]." It is necessary to produce some instances of the practice of the House under this standing order: the exceptions are such as confirm the force of the rule.

In Bertelot's divorce Bill: the petitioner had failed of a verdict in consequence of a deed of separation: but there was proof of a criminal intercourse before the execution of the deed, for which a verdict had been obtained, and the Bill was proceeding when it appeared, that by a deed of separation the petitioner had covenanted to bring no action, and commence no process, &c. against those who might be implicated in the conduct of his wife.

[u] Woodfall's Parl. Rep. vol. xvii. p. 56.

[x] In the committee on the Bill for prevention of adultery Lord Eldon proposed, that a man should not be liable to a criminal prosecution for adultery unless the woman with whom the adultery was committed was at the time living under the protection of her husband. Ibid. vol. xxiii. p. 76.

When this transpired, the Lords without further proceeding rejected the Bill[y].

In Woodcock's divorce Bill: there had been a deed of separation, and the husband had not prosecuted the adulterer in the court of King's Bench. Lord Auckland therefore thought that the grounds of this Bill were very unsatisfactory, as under the circumstances "the law acknowledged no injury, and would afford no redress. The deed of separation deprived the husband of the means of obtaining any compensation for his wife's dishonour. . . . . When by such a deed the husband had withdrawn all protection from the wife, and had left her a prey to the temptation of every seducer, it was too much for him to intreat the special interposition of the legislature in his favour. The consequences of such proceeding would be most mischievous. If once deeds of separation and pretended subsequent acts of adultery were held a sufficient ground of divorce, the collusion of the parties would be facilitated; the husband would turn his wife over to a friend; and a plea of adultery would be followed by a petition for divorce." The Lord Chancellor (Eldon) would not admit the validity of what was styled a legal separation, without a decision of the House of Lords; and, adverting to the opinion of Lord Kenyon, that a deed of separation "derelicted from the right of the party to complain, as a voluntary abandonment of the right and duty of matrimony," declared that he could not conceive how a person under such circumstances could claim the interposition of the

[y] Woodfall's Parl. Rep. vol. xix. p. 114, 288.

legislature. The grounds of separation in this case were difference of habits, expence, &c. The Bill was rejected[z].

In Hoare's divorce Bill: a verdict had been given in two actions in the King's Bench for the defendant, on the ground that the plaintiff had received no injury, having voluntarily abandoned his wife. In this case the first petition was withdrawn, and an amended petition was presented, which was rejected, because the House would not undertake to revise the judgments of the courts below, and would not depart from its own usage when it might be obtained[a].

In Crowe's divorce Bill: there had been a separation, a negligence in the husband, which did not become the head of a family; a desertion of the wife, and a want of that good and perfectly pure domestic character, which such claimants should possess. The petition, after being again and again considered, was rejected without a division[b].

In Hayes's divorce Bill: although there had been a verdict in the King's Bench, and a divorce in the ecclesiastical courts, yet as a deed of separation had been signed before the institution of proceedings, the further consideration of the measure was suspended, until the petitioner, who was absent on foreign service, should be able to attend. On this occasion, Bishop Horsley expressed his repugnance to these private separations, holding them to be illegal and

[z] Woodfall's Parl. Rep. vol. xxvii. p. 393, 554. [a] Ibid. p. 473, 492, 515. [b] Ibid. vol. xxvi. p. 726, 751, 769. vol. xxviii. p. 27, 124.

contrary to the general law and spirit of the marriage institution. The Lord Chancellor also thought it proper to inform the public, that a sentence of divorce not *bonâ fide* obtained in the ecclesiastical courts, was not that kind of proceeding which would sustain the subsequent measures in that House[c].

In these several instances, the existence of the deed of separation was fatal to the petition for divorce; and the judgment of the House of Lords confirmed the judgment of the court of King's Bench. These cases were argued at a time, when the unhappy frequency of petitions for Bills of divorce, and the debates on the standing orders of the House and on the Bill for the prevention of adultery, had induced a familiar acquaintance with the whole doctrine of divorce; and the decisions of the House were conducted by the arguments and authority of Lord Auckland, Bishop Horsley, and the Chancellors Thurlow, Loughborough, and Eldon, sustaining the known opinions of Lord Kenyon. If other argument were wanting, it might be found in the cases of exception, in which the verdict in the court of King's Bench was dispensed with, because it could not be obtained: 1. in Mrs. Addison's divorce Bill, the petitioner was a woman incapable of impleading her husband[d]: 2. in Woodmason's divorce Bill, the wife of the petitioner, a French woman, had obtained a divorce by the law of France[e]: 3. in Twisleton's divorce Bill, the reasons assigned for the separation were satisfactory to the House,

[c] Woodfall's Parl. Rep. vol. xxvi. p. 530.
[d] Ibid. p. 116.
[e] Ibid. vol. xvii. p. 432.

although the fact of the separation had precluded the remedy in the courts below[f]: 4. in the case of a naval officer whose wife had committed adultery promiscuously, during the absence of her husband on foreign service[g]: 5. a case was put by Lord Kenyon, that the adulterer might die before the action could be brought[h].

While Bills of separation are thus fatal to the interests of the husband, in precluding him from the redress which he is tempted to seek, under the worst of injuries, either in the court of King's Bench or in the Houses of Parliament; the highest authority[i] has been found to concur in the opinion, that these deeds are illegal, although it may be too late to say that the courts of Westminster ought not to entertain them as the grounds of any proceeding, since it is the known practice of those courts to give them a certain degree of weight and consideration. Words cannot more clearly express the state of legal practice. The doctrine of a separate maintenance of man and wife was unknown to the ancient law, and it was in the progress of a corrupt and unworthy fashion that the innovation was admitted; that a married woman was allowed to assume the appearance of a single woman, and to act to all intents and purposes in that capacity; and that it was held by the courts, that the husband was not liable even for necessaries, upon a supposed principle of convenience and justice[k]. The necessity of a permanent maintenance

[f] Woodfall's Parl. Rep. vol. xvii. p. 348, 510. [g] Ibid. vol. xxvi. p. 116. [h] 5 Term Reports, 357. [i] Lord Eldon. Parl. Rep. vol. xxvi. p. 530. [k] 1 Term Reports, 5.

was made the condition of these decisions, and the interposition of trustees was introduced for the support of the permanence which was required. The case of Corbett v. Poelnitz was decided upon this ground; but the decision was disputed upon high authorities, and was eventually overruled. In Lewis v. Lee[1], which was an action for goods sold, the defendant pleaded that she was a married woman; to which the plaintiff replied, that before the cause of action she was divorced by sentence of the ecclesiastical court, was allowed a sufficient sum for her support, and obtained credit as a *fême sole*. It was argued for the defendant, that the sentence of the spiritual court did not dissolve the marriage, but merely suspended it for certain purposes, until such time as the parties should be reconciled, and put an end to its operation. Before the case of Marshall v. Rutton, the old law had been sometimes broken in upon, and effect had been given to the contracts of married women living apart from their husbands; but by that case the old law was restored, and it was solemnly decided, that a *fême covert* cannot contract or be sued as a *fême sole*, even though she be living apart from her husband, with a separate maintenance secured by deed. The court admitted the plea, and judgment was given for the defendant. In the case of Ellah v. Leigh, which was the case of a married woman living apart from her husband during a suit in the ecclesiastical court, with alimony allowed, and sued as a *fême sole*, Lord Kenyon adverted to some recent decisions, which he hesitated to confirm, and

[1] In the King's Bench. Times, Oct. 29, 1824.

refused to enlarge: "I confess that I do not think that the courts ought to change the law, so as to adapt it to the fashion of the times: if an alteration in the law be necessary, recourse must be had to the legislature for it. The case of Corbett v. Poelnitz was indeed decided by great authority; and when a similar question arises, perhaps it may influence my judgment: but until such a case does arise I shall suspend my opinion upon it. I remember a case many years ago in Chancery, when Lord Bathurst presided in that court, where a Bill was filed against a woman, who was separated from her husband, and had separate property, to have part of this property given up, in satisfaction of a debt contracted by her; but the Lord Chancellor thought that this property could not be touched, without having the trustees, in whom the legal estate was vested, before the court; and the case stood over to make the trustees parties to the suit. In Corbett v. Poelnitz, Lady Percy's property was vested in trustees; but as those trustees were not before the court, I do not know how that property could be got at. But without touching that authority, it is sufficient to say, that this case is very different from that; for here the defendant had no permanent fund: and as this is an attempt to extend the doctrine of that case, I am clearly of opinion, that the present action cannot be maintained[m]." The more decided opinion of Lord Kenyon was demanded in the case of Marshall v. Rutton, which was twice argued before the judges; and this judgment, which has been already

[m] 5 Term Reports, 682.

recited, was delivered by him, reversing the former decisions, and establishing, that a married woman cannot be sued as a single woman. Cases have also occurred, in which the court has discharged "a married woman, on filing common bail, who was sued for goods sold and delivered to her by the plaintiff, knowing at the time that she was a married woman, though living apart from her husband, with a separate maintenance:" and Lord Ellenborough "saw no objection to relieving her in this summary way, the plaintiff having dealt with her, knowing her to be a married woman[n]."

There are nevertheless many cases, in which the authority of these deeds has been recognized and approved. Thus in Lister's case, "where a husband and wife had agreed to live separate, and she was to be allowed a separate maintenance; and the husband pretending, as it is said, a desire to be reconciled to her, which she refused, forcibly took her into his custody: the court so far recognized this species of contract, that they set her at liberty, saying, that the agreement should bind them both, till both agreed to cohabit together again. This was again recognized in Mary Mead's case, where the court held such an agreement to be a formal renunciation by the husband of his marital right to force his wife to live with him. So in Seeling v. Crawley, an agreement for separation, upon certain terms to be performed by the husband and the father of the wife, was decreed by the court of Chancery to be executed on a Bill by the father against the husband.

[n] 7 East, 582.

The like was done in Angier v. Angier, and Guth v. Guth, upon Bills respectively filed against the husband by the wife, for a performance of articles of separation[o]." So in Lord Rodney v. Chambers, it was settled, that "a covenant by a husband, to pay to trustees a certain annual sum by way of separate maintenance for his wife, in case of their future separation, with the consent of such trustees or their executors, was valid in law[p]." The same doctrine, with some immaterial distinctions, was held in Jee v. Thurlow, in the pleadings upon which it was also argued, that "in Worrall v. Jacob, Sir W. Grant, then Master of the Rolls, treated it as settled law that such deeds were valid: and in Stuart v. Kirkwall, effect was given to such an arrangement; for it was there held, that a married woman, separated from her husband and having a separate maintenance, might render that liable by accepting a bill of exchange[q]."

These various decisions of the courts have left room for the pleader to argue that some of these cases proceeded on very dubious grounds; that many of them were decided in the court of Chancery, which on many occasions exercises an equitable jurisdiction in family arrangements; that no action of law could have been maintained on the agreements for want of a legal consideration; that in all probability, if the question were now to arise for the first time, it would undergo a very different consideration; that it is contrary to the policy of the

[o] 2 East, 288. [p] Ibid. [q] 2 Barnewall and Cresswell, R. 549.

law and to good manners to enter into a contract which has a direct tendency to loosen the bond of union between husband and wife, and to facilitate their separation; and that the public evil of such separation is greater or less in proportion to the illegality or immorality of the cause which produces it, upon which the ecclesiastical courts alone are competent to decide[r]. This is the argument of the Bar; and it coincides with the hypothetical insinuations delivered from the Bench: by Lord Eldon; "If this were *res integra*, untouched by dictum or decision, I would not have permitted such a covenant to be the foundation of an action or a suit in this court. But if dicta have followed dicta, or decision has followed decision, to the extent of settling the law, I cannot, upon any doubt of mine as to what ought originally to have been the decision, shake what is the settled law upon the subject[s]."—By Lord Ellenborough: "The question which has been agitated appears to have been laid at rest for a long period by repeated decisions and the uniform practice of the courts. If it were now a new question, whether any contract could by law be made which tended to facilitate the separation of husband and wife, I should have thought that it would have fallen in better with the general policy of the law to have prohibited any such contract: but they are now become inveterate in the law[t]."—By Mr. Justice Grose: "However we may lament the practice which is established, it is impossible for us

[r] 2 East, 291.

[s] St. John v. St. John, cited 2 Barnewall, and Cresswell, 551.

[t] 2 East, 293.

at this day to say, that agreements for separate maintenance are not considered valid both in law and equity. The case of Gawden v. Draper was a decision in a court of law which establishes the general proposition for which it was cited; for unless the agreement there declared on were valid, the plaintiff could not have had judgment. And it is too much for us to say, that the court were inattentive, and did not know what they were deciding. Such agreements having been acted upon both in courts of law and equity, we cannot now disturb those decisions[u]."—By Chief Justice Abbot: "For a long series of years all the judges, when called upon to pronounce judgment in such cases, have felt themselves bound by former decisions, although each of them in his turn has said, that his opinion would probably have been different, had the question been *res integra*. . . . That opinion (the opinion of Lord Eldon before recited) is a fit guide for us. Ought not we to say, that if a new decision is to overturn all the former cases on this question, it must be the decision of that high tribunal which is competent to give the law to all other tribunals, and rectify their errors, when called upon to review them[x]."—By Justice Bayley: "As to the general question, I am of opinion, that as it has for so long a period of time been the system of jurisprudence to hold such deeds valid, it is not for this court to entertain the question which has been proposed. If any alteration is to be made in the law as now understood, it must be by a decision of the House

[u] 2 East, 295. [x] 2 Barnewall and Cresswell, 551.

of Lords, or an Act of the legislature[y]."—By Justice Best: "Whatever opinions judges may have entertained as to the policy or impolicy of such contracts as this, it would be a strong measure for us on the mere ground of policy to overthrow former decisions, when Lord Eldon, sitting in the House of Lords, did not feel himself strong enough to do so[z]."—Chief Justice Dallas is also reported to have said, that "the legality of deeds of separation had for the last fifty years been the subject of doubt and dispute among the highest characters in the law, without, until very lately, receiving any regular decision. He himself would wish that a more full and final decision should be given to the question; for he could not see upon what principle of law or reason a civil contract of marriage, solemnized by a religious ceremony, was to be set aside by the parties, each barring the other of the right acquired by the first contract, without the intervention of any court, and in fact, so taking, by their own act as it were, the jurisdiction of interfering in their case out of all the courts[a]."

The doubts acknowledged from the Bench, the arguments delivered at the Bar, and the variable and conflicting decisions of the Courts, are sufficient to justify the conclusion, that deeds of separation are illegal, notwithstanding the weight and consideration which they have received: their validity rests on the mere practice, not on any settled principle, of law. The courts are at present bound by a certain succes-

[y] Barnewall and Cresswell, 552. [z] Ibid. 554. [a] Times, Dec. 19, 1824.

sion of precedents, which it will require the moral energy of another Lord Kenyon to overthrow, but which may not be able to withstand the clear and solid arguments which in a case of high interest and importance may be produced before a competent tribunal.

It is an opinion which derives its chief weight from the high character of the judge[b] to whom it has been (it may be very unjustly) ascribed, that there are cases in which it may be desirable to induce a mother to leave the house and accept a separate maintenance to prevent her example from injuring her children; and unhappy circumstances may arise, in which it will be better for all parties that a separation should be effected. Cases unhappily arise in the experience of every day which suggest the hypothesis, but will they justify the conclusion? To what extent is the doctrine to be carried? Is it with the usual partiality of the law to be restricted in its application to the wife, and is the husband to be exempted? Is it to be another of the evil and unhappy privileges in respect of matrimony which the rich and great are to possess, but to which the poor[c] are justly and wisely, but not without the excitement of invidious feelings, forbidden to aspire? Or is it to be offered indiscriminately to all ranks of the community, so that every man who takes offence at his matrimonial

[b] Mr. Justice Bayley: Times, Jan. 28, 1824.

[c] The Lord Chancellor mentioned a case, which had fallen under his own cognizance, of a servant, who, in a deed of separation, had made a settlement upon his wife, increasing according to his wages. Woodfall's Parl. Rep. vol. xxvii. p. 554.

condition, who thinks fit to suspect the purity of his wife, and to be apprehensive of the effect of her domestic example, shall be free to fix the terms upon which he may revoke the contract which he has formed?

It is a fearful question, but let it be proposed in its largest and most unlimited extent: Is there any moral or political necessity which can justify the separation of a husband and a wife? Are there any benefits which the individual may hope to obtain which can preponderate over the mischief from which the public cannot escape? "If a married pair in actual and irreconcileable discord complain that their happiness would be better consulted by permitting them to determine a connexion which is become odious to both, it may be told them, that the same permission, as a general rule, would produce libertinism, dissension, and misery amongst thousands who are now virtuous, and quiet, and happy in their condition; and it ought to satisfy them to reflect, that when their happiness is sacrificed to the authority of an unrelenting rule, it is sacrificed to the happiness of the community[d]." The law of the land, operating in the ecclesiastical courts, has limited the grounds of separation to cruelty and adultery: even these may be abused, and a husband who wishes to be separated from his wife may provoke her by ill-treatment and infidelity to seek the redress of which he desires to avail himself. The great security of matrimonial happiness is founded in the conviction that the condition of

[d] Paley's Mor. Philos. b. iii. pt. 3. c. 7.

marriage is indissoluble; and in this condition the parties will for their own peace gradually conform their inclinations, and the coalition of minds and tempers will be confirmed by the natural influence of common children, and the feeling of a common interest in them and in each other. If marriage shall ever be reduced from the high ground of a divine institution to the condition of a merely civil contract, which the parties shall have power to dissolve at their own pleasure and discretion, the mutual forbearance and submission which are the great means of conjugal repose are at an end: when the object which led to the union of hands is disappointed or attained, there will be no more motive for the union of hearts; there will be no more fear of the first offence or its aggravations; there will be no more disposition to reciprocal and perpetual conciliation; the momentary passion will be succeeded by unrestrained indifference; indifference will terminate in aversion; and each will hurry to the remedy of separation, in which each anticipates the recovery of peace. Under the law of revolutionary France, which permitted an arbitrary right of divorce, there were twenty thousand divorces in six or seven years. Even under the existing law, the occasional listlessness of wedded life, the want of even marked and studied attention, is but too often made a ground of irritation and offence: and the progress of domestic discontent and of its several aggravations, until it is concluded in a private act of separation, has been drawn by the hand of a master[e], and with a faithful-

[e] Sir William Scott: judgment in Evans v. Evans. Gent. Mag. vol. xcv. pt. 1. p. 518.

ness which will be but too generally and too deeply felt: "Two persons marry together with something of warmth and sensibility in each of their tempers. The husband is occasionally inattentive; the wife has a vivacity which sometimes displeases, sometimes offends, and sometimes is offended. Something like unkindness is produced and is then easily inflamed. The lady broods over petty resentments, which are anxiously fed by the busy whispers of humble confidants. Her complaints, aggravated by their reports, are carried to her relations, and meet with something like facility of reception from their honest but well-intentioned minds—a state of mutual irritation increases—somewhat like incivility is continually practising, and, where it is not practised, it is continually suspected—every word, every act, every look, has a meaning attached to it—it becomes a contest of spirit in form between two persons eager to take, and not absolutely backward to give, mutual offence. At last the husband breaks up the family connexion, and breaks it up with circumstances sufficiently expressive of disgust: treaties are attempted, and they miscarry, as they might be expected to do in the hands of persons strongly disaffected to each other. A libel is given in, black with criminating matter. Recrimination comes from the other side. Accusations rain heavy on all sides, till all is involved in gloom, and the parties lose sight of each other's real characters, and the truth of every one fact is involved in the cause."

The principal causes alleged for private separations are bad example, which it is expedient to remove, a habit of ruinous expence, and difference of temper.

The inadequacy of these motives will appear on the most cursory review of their extent and application.

The danger of a bad example may be found on either side: but is the wife to have the privilege of putting away her husband, that his example may not corrupt her children, or is this discretionary licence to be conferred only upon the husband, although his example may be equally immoral with that of the woman? In the lowest class of life, and in the degraded and dependent condition of the poor, the licence will not be granted at all: in the higher classes there are many remedial measures by which the evil influence may be prevented, and the children may in a certain degree be removed from its dangerous effects. It is said, *in a certain degree*, because, if the bad example is exhibited at all, it will have, and cannot be prevented from having, a pernicious operation. The possibility however that the example may contaminate the children, will of itself impose a powerful restraint upon any mind not bereft of feeling: and the knowledge that the contagion of the example may be removed will only weaken the emotions of sensibility and shame.

But there is a plea of extravagance, and of a ruinous want of economy, which the fortune of the husband cannot sustain: and is there no profusion in the man? Is the wife upon this plea to separate herself from an extravagant husband? And is it not in the power of the husband to regulate the expences of his own household? The plea defeats itself by proving too little, and admitting too much; it proceeds on the incompetence of the husband to manage his own affairs, and gives to the man, who cannot

control the housekeeper, a power to judge and discharge the wife.

But it is said, that the parties cannot agree; and it is asked, Is not separation better than strife? The parties should have consulted their tempers before their marriage, and after their marriage they should study to acquiesce in the wills of each other; and that acquiescence will be effected by necessity, and be counteracted by the possibility of relief: there are no circumstances, under which the most irreconcileable difference of temper can supersede the law and institution of God, or dispense with a solemn oath and engagement, in which there is no reservation concerning the temper. It was a wise and just judgment in a case, in which much stress was laid on the wretched state of disaffection, in which the parties were living, and in which they would probably continue to live, unless they were relieved by a sentence of divorce. To this the learned judge[f] replied: "The *humanity* of the court has been loudly and repeatedly invoked. Humanity is *the second virtue of courts:* but undoubtedly the first is *justice.* If the present were a question of humanity simply, and confined its views to the present parties, it would be easily decided on first impressions. Every body must feel a wish to sever those who wish to live separate from each other, and who cannot live together with any harmony: but the law has said that married persons shall not be separated upon the mere disinclination of one *or both* to cohabit together. The disinclination must be founded upon

[f] Sir W. Scott: Tebbs, p. 231.

reasons which the law approves. To vindicate the policy of the law is no necessary part of the duty of a judge: but it would not be difficult to shew that the law in this respect has acted with its usual wisdom and humanity; with that true wisdom and real humanity which regard the general interests of mankind. For though in particular cases the repugnance of the law to dissolve the obligations of matrimonial cohabitation may operate with great severity upon individuals, yet it must be remembered, that the general happiness of the married life is secured by its indissolubility. When people understand that they must live together, except for a very few reasons known to the law, they learn to soften, by mutual accommodation, that yoke which they know they cannot shake off; they become good husbands and good wives from the necessity of remaining husbands and wives; for necessity is a powerful master in teaching the duties it imposes. If it were once understood that upon mutual disgust persons might be legally separated, many persons, who now pass through the world with mutual comfort, with attention to their common offspring, and to the moral order of society, might at this moment have been living in a state of mutual unkindness, of estrangement from their children, and of unrestrained and licentious immorality. The happiness of some must then be sacrificed to the general good."

The English Church has affirmed the perpetuity of marriage: the English law has shewn no favour or countenance to private acts of separation; and the sound feelings of the great body of the people have concurred in approving the wisdom of their public

institutions. It is not easy to conceive the effects which would follow any alteration of the law, or the temptations to licentiousness which would ensue, and of which not the shadow of the shade has transpired in the judged cases of adultery committed in a state of separation. While the native energy of his character is such as cannot degenerate into uxoriousness, the love of home, which is peculiar to the Englishman, will lead him to restrict the occasions of separation[g] by a rule of duty and necessity, to obey the calls of civil office, military enterprize, and commercial speculation, with his thoughts and desires directed homewards, and with an anxiety to return to the bosom of his family with renovated pleasure and delight. The criminal desertion is that which leads a man to seek his pleasures apart from his family, and gradually introduces that malicious[h] desertion, as it has been called, in which a man, without any just or honourable motive, unfaithful, capricious, or impatient of the yoke of marriage, quits his wife and family, and unmindful of public and private admonition abandons all care of her, and as far as in him lies dissolves the bond of matrimony.

[g] Doctores juris civilis distinguunt inter absentiam necessariam seu probabilem et voluntariam. Priorem subdividunt in quatuor species. Alia enim est necessaria, simul et probabilis, ut quando quis reipublicæ causâ abest; alia probabilis tantum sed non necessaria, ut quando quis studiorum gratiâ abit; alia necessaria sed non probabilis, ut quando in exsilio et vago metu aberrat; alia quidem voluntaria sed sine contumaciâ, ut quando mercaturæ exercendæ aut negotii expediendi causâ peregre quis proficiscitur. Gerhard de Conjug. s. 626.

[h] Gerhard, s. 625, 626.

Such malicious desertion is made in the Lutheran Church (and in Scotland, and was proposed in the *Reformatio Legum* to be made in England also) a ground of divorce, with licence to marry again, principally on the authority of one of those perversions of Scripture which are but too common in the modern laws of marriage and divorce. The unbeliever, whose case is specifically argued by the apostle, is interpreted[1] generally of any person unfaithful to his vows: and because the apostle did not insist on the cohabitation of the faithful or Christian with the unfaithful or alien, the modern doctrine has permitted the separation of those who are faithful from those who are not faithful, in a totally different sense, adding what the apostle did not add, the licence of a second marriage. Such is the danger of overlooking the scope and purpose of the apostle's argument, and such the facility of enlarging the occasions of divorce, and of eluding the restrictions imposed by our Lord and his apostle.

What arguments may be alleged in favour of deeds of separation it is not necessary to enquire: it is no common reasoning which will disprove the legal, moral, and religious objections to their validity: they are justified by no necessity; they are sustained by no principle of law; they preclude the redress of injuries; they are contrary to the solemn covenant of marriage; they are proscribed by the law of Christ and his apostle; and subversive of the great end proposed by the wisdom of God in the institution of marriage, the help and comfort of the parties, and the religious instruction of the children.

[1] Gerhard, s. 624.

CHAPTER VII.

PRACTICAL RESULTS OF THE ADMISSION OF MARRIAGE TO BE A MERELY CIVIL CONTRACT.

THE principle, which it has been attempted to establish, that marriage is not merely a civil contract, and the views which have been exhibited of the practical expedience of adhering to this principle, may be confirmed by a brief review of the disorder and instability which are found to prevail in marriage, wherever that relation is held to be a civil contract and nothing more.

In this review there is no occasion to take advantage of extreme cases; and it is not therefore desirable to insist on the authority of Beza[a], who was amazed at the wonderful artifice of the great deceiver of mankind, in suggesting, that whatever is bound by the mutual consent of parties, may like other contracts be dissolved by their mutual consent. The facilities of divorce under the merely civil contract are admitted by Paley.

It was a similar principle which possessed the mind of Milton. He denied that there was "any shadow of reason" or "even the feeble semblance of presumption derived from the Levitical law, for assigning to the ministers of the Church the celebration of marriages;" and maintaining that conjugal

[a] De Repudiis et Divortiis.

love was the prime end and form of the institution of marriage, he inferred, that "the perpetual interruption of peace and affection by mutual differences and unkindness, must be a sufficient reason for granting the liberty of divorce[b]." He held also that "indisposition, unfitnesse, or contrariety of mind arising from a cause in nature unchangeable, hindring and ever likely to hinder the main benefits of conjugal society, which are solace and peace, are a great reason of divorce[c]." Some of the grounds on which he supported these opinions are at least worthy of the superstructure. Christ hath said that "the sabbath was made for man; and I ask what was more made for man than marriage: and as he dispensed with the law of the one, so would I with the law of the other: I want not pall or mitre, yet in the firm faith of a knowing Christian, which is the best and truest endowment of the keys, I pronounce the man who so binds the ordinance of marriage not to have the Spirit of Christ[d]." Thus, without denying the divine institution of marriage, he would have superseded its religious solemnization, and have extended the licence of divorce. His practical exposition of these principles is well known. His wife left him, and neglected his invitations to return; and he resolved to repudiate her for disobedience, and justified his inclination by argument in various publications, and proceeded to offer his addresses to another woman, but was eventually reconciled to his wife[e].

[b] Treatise on the Christian Doctrine. [c] Doctrine and Discipline of Divorce. [d] Tetrachordon. [e] Johnson's Life of Milton.

It does not appear that much was written against him, or any thing by any writer of eminence. His doctrine was indeed denounced as one of "many horrid and prodigious opinions," one of those "stupendous errors," which Satan had been "the grand agent in propagating with all his power and policie," and which the ministers of Christ in that day were confident that they might, "without the least breach of charity to any the authors, fautours, or abettours of them, utterly loath, execrate, and abhorre[f]." But whether the strange doctrine was otherwise treated with contempt, and thought more worthy of derision than confutation; whether, when he was summoned before the Lords, his doctrine was approved, or his accusers not favoured, and he was therefore dismissed[g], the silence of his advocates and his adversaries is the more remarkable, in the prevailing unsettledness of religious opinion, and especially as the Commonwealth were about to supersede the religious celebration of marriage, and to degrade it to a civil contract, attested before a civil magistrate.

It would seem that republics have been prone to degrade the sacred character of marriage. The National Assembly of France, in the Constitution of 1791, decreed, that the law considered marriage only as a civil contract; and it appears from the Moniteurs of 1797, that in the interval of the six or seven following years there were twenty thousand divorces.

[f] Testimony to the Truth of Jesus Christ against the errours, heresies, and blasphemies of these times, subscribed by the Ministers of Christ within the Province of London, Dec. 14, &c. 1647.

[g] Johnson's Life of Milton.

"Before the Revolution the form of marriage in that country was of a mixed nature, so that it was doubted whether the essence of marriage consisted in the civil contract, or in the sacrament or religious solemnization; for the marriage law of France was derived from the ancient canon law, and agreeably to the independence of the Gallican Church, from the provincial councils of the kingdom, subject to the civil regulation of the monarch. The substitution of the civil magistrate for the ecclesiastic constitutes the principal difference between the rules laid down by the *Ancien Regime* and the *Code Civil*. . . .

"According to the civil code of France, it seems that a domicil of six months is a necessary qualification for marriage, after which the municipal officer of the commune of the domicil, at the door of the hall of the commune, publishes the names, domicil, and age of the parties intending to marry, and the name and domicil of their parents. After the publication a public act is drawn up, setting forth the description of the parties, and the day, time, and place, of the publication, a copy of which remains affixed on the door of the hall of the commune, until the end of eight successive days, when the publication is to be repeated with the same formalities.

"After the lapse of three complete days from the last publication, the marriage is celebrated on a day appointed by the parties, at the hall of the commune, by the municipal officer of the domicil of one of the parties, in the presence of four witnesses. The officer, after having addressed the parties on the subject of their relative duties, receives their separate declaration, that they take each other for husband

and wife, and then "in the name of the Law" pronounces them to be united in marriage, and an act is immediately drawn up and recorded.

"According to the law of France it is only in virtue of *this act* that the rights belonging to marriage can be maintained in that country: so that, like the Marriage Act of England, the regulations of France, as to the form of marriage, are not merely directory, but prohibitory also; admitting no marriage to be valid which has been contracted within the territory according to any other form than that prescribed by the civil code of the kingdom[h]."

The law, which substitutes the civil for the ecclesiastical officer in the contract of marriage, has also made provision for divorce and the dissolution of marriage before the civil tribunals, and authorized the forms for the revocation as it were of the civil engagement. By the *Code Civil*, marriage is dissolved by death; for adultery by the wife, and by the husband also, if he retains the adulteress in his house; for *exces*, cruelty, or grievous injury of either to the other; upon sentence of either to an infamous punishment, or a punishment implying civil death; and upon the mutual consent of the parties in the manner prescribed by law; and upon exhibition of proof of the incompatibility of their tempers, which renders them incapable of living together, and forms a peremptory ground of divorce[i]. Preliminary to the divorce is required evidence of the age of the parties; of a certain interval

[h] Poynter's Doctrine and Practice of the Eccl. Courts, c. xvi.
[i] Code Civil, art. 217—233.

after the marriage; of the age of the woman at the time, which the national gallantry very properly requires to be less than forty-five years; and of the consent of the parents as in the contract of marriage; and a statement in writing of the residence of the issue and of the wife during the proceedings, and of the sum proposed by the husband for the maintenance of the wife during the trial; together with an inventory and valuation of their respective rights and properties. Upon compliance with these conditions the parties may present themselves in person, and in presence of two notaries declare their will before the civil tribunal of the department, and the judge shall address them separately and together, and offer to them such exhortations and representations as he shall judge convenient, and as may contribute to their reconciliation, and shall read in their presence the law of divorce, and apprize them of all the consequences of their proceeding. If they nevertheless persist in their intention, the reasons for which they desire to be divorced and their mutual consent shall be registered, and they shall be required to deposit with the notaries, in addition to the preliminary certificates, registers of their own birth and marriage, and of the birth and decease of their issue, together with an authenticated declaration of the consent of their parents. A minute of these proceedings shall be drawn up, to which shall be annexed a notice to the woman to retire, and of the place appointed for her retirement, till the divorce shall be concluded. The declaration shall be renewed at certain intervals, with proof of the adherence of the parties to their first agreement. At the

expiration of a year and fifteen days from the first declaration, the parties, accompanied by their friends and the principal persons of the district, shall appear before the judge, and require of him in the presence of each other a sentence of divorce. On the registry of this requisition the registrar shall draw up a minute, which shall be signed by the several parties, at the foot of which the judge shall notify that a report shall be made to him from the chamber of council on the matters communicated by the registrar. If the public minister shall find that the preliminaries required by law have been fully proved, he shall conclude the proceedings with the words *La loi permet;* and shall admit the divorce, and send the parties before the officer *de l'etat civil*, that it may be published. If the preliminaries shall not be proved, he shall pronounce *La loi empeche;* declaring that he has no power to admit the divorce, and assigning the reasons of his decision. The decree awarding the divorce shall be in force for twenty days, within which the parties shall present themselves before the proper officer, and cause it to be published. In case of delay, the judgment is void[k]. It is necessary to observe, that this law of divorce was abolished, and the law of separation substituted, on the restoration of the legitimate dynasty in 1816.

The Batavian republic, which regulated the proceedings of the Calvinistic Church at the Cape of Good Hope, held marriage to be a civil contract,

[k] Code Civil, art. 275—294. Compare Code de Procedure, art. 875—881.

which nothing was required to legalize beside the forms of the matrimonial court, before which the parties were required to appear, and to answer certain interrogatories, without which there could be neither publication of banns, nor licence, issuing from the secretary's office, dispensing with the publication. In this office all marriages contracted at the Cape are registered, and from this office only can be obtained a legal copy of the registry. There is no difficulty in dissolving a marriage which is thus easily contracted. If the parties after an interval shall plead before the court of justice that their tempers and dispositions are so opposite as to imbitter their lives, and that continued cohabitation must be attended by the most serious consequences, and therefore they intreat to be separated from bed and board and the community of property, the court, on the report of the commissioner, to whom the memorial is referred, whether for amicable arrangement or for investigation, shall, on the consideration of the premises, decree the separation required; affirming the private arrangement made between the parties for the maintenance of the issue of the marriage; rendering each person responsible for the debts which he or she may contract; and refusing the cognizance of the court to any transaction upon account of the joint estate[1].

"In Connecticut and Rhode Island, by the law of these states of civilized North America, six weeks' absence is a sufficient ground of divorce. Instances too are not unfrequent of husbands going from the

[1] State of the Cape of Good Hope in 1822, c. ii. s. 6.

neighbouring state of New York into one or other of these, and after a residence of six weeks intimating to their wives by public advertisement that they require their presence and society; and on the non-appearance of the wife obtaining a divorce, and returning to New York, loosed of their matrimonial engagements[m]."

This must be the climax of the facility of divorce, and of the dissolution of the matrimonial engagements, founded on a merely civil contract. But it is not necessary to cross the ocean in proof of the uncertainty of this principle. Scotland, in which marriage is generally supposed to be a civil contract and nothing more, may exhibit all the proof which is required, in respect both of the contract and the dissolution of marriage.

"The law of Scotland admits the validity of marriage contracted according to any form between any persons of marriageable age, and in any place, and without witnesses, provided there is sufficient evidence to substantiate the fact, that the parties have taken each other for husband and wife; and even a mutual promise of future marriage, followed by cohabitation, is there held to be a contract complete and valid[n]."

"In the law of Scotland marriage is considered as an ordinary civil contract, which is completed by the interposition of the consent of parties, provided this take place unequivocally, seriously, and deliberately, and with a genuine purpose immediately to establish the relation of husband and wife, and

[m] Fergusson's Reports, p. 284. [n] Poynter, c. xvi.

not to engage only or betroth themselves to marry at some future time. A marriage may thus be effectually made in Scotland without the form of celebration by a clergyman, and without the use of any precise ceremony or solemnity even of a civil nature, and in any way wherein the explicit and mature consent of parties is gravely exchanged. With respect to the evidence of the proper matrimonial consent having passed between the parties, the practice of the law of Scotland is not limited by strict or scrupulous rules, but allows the fact to be vouched or inferred in sundry modes of evidence; by public cohabitation under the character, or, as it is termed, the habit and repute of man and wife; by writings of mutual acceptance, as spouses *de præsenti;* by mutual written declarations or acknowledgments of marriage; by a series of letters, such as in their contents and mode of address and subscription either express or virtually imply an acknowledgment of marriage; by verbal declaration also before a magistrate, or made on some suitable and serious occasion before creditable witnesses called by the parties for that purpose°. Whether the writings executed by the parties are in the form of

° In the case of M^cAdam against Walker: Elizabeth Walker had cohabited with Mr. M^cAdam, and borne him two children. In the presence of several of his servants, whom he called into the room for the purpose of witnessing the transaction, he desired Elizabeth Walker to stand up, and give him her hand, and she having done so, he said, This is my lawful wife, and these are my lawful children. On the same day he committed suicide. The court held the children to be legitimate.

mutual and present acceptance of each other as spouses, or in that of a declaration of marriage as already made, is no wise material; for still such writings are evidence under the hand of parties, and to each against the other, that the just matrimonial consent has passed between them in substance, though not in form; the voluntary execution of such declarations is a virtual consent, as at that date, to stand in the relation of married persons. More especially, regard is paid to declarations or acknowledgments of marriage, oral or written, when it appears that they have been followed with, or accompanied by, the parties' carnal knowledge of each other; not that such intercourse is regarded as the seal or accomplishment of the contract, or indispensable to its validity, but as a material ingredient of evidence to shew that it was meant and understood between the parties that they were actually man and wife from that time, and not engaged or under promise only. It is however carefully to be observed, with respect to all these several modes of evidence, whether oral or written, that they are liable to be controlled and expounded by other writings, if such there be, of a contrary import, which have passed between the parties, or by facts and circumstances of a different tendency in the after conduct and proceedings of parties; whereby it becomes necessary for the judge to take a complex view of the whole case, and to determine on the whole series of evidence and circumstances, whether by the writings and acknowledgments which passed between the parties they did or did not truly intend

to become man and wife, and did or did not consider themselves as being in that relation to each other[p]."

The validity of the consent *per verba de futuro* appears to depend entirely upon the copula, which may either follow or precede the marriage, and by which it obtains the force of consent *per verba de præsenti*, and without which the parties are at liberty to resile or forfeit their engagement, with liability however to an action for damages, for expences incurred in consequence of the previous stipulation[q]. The chief difference between the promise *per verba de præsenti* and the promise *per verba de futuro* is the necessity in the latter case of establishing the marriage by legal evidence, if either of the parties denies its existence. The state of the woman in the interval between the promise and the consummation, and the address to which she must submit for the accomplishment of her purpose, especially if the man is desirous of evading the promise which it is her wish and interest to fulfil, is not very consistent with the modesty and delicacy of the sex. It is an inversion of the principle, *consensus non concubitus facit matrimonium*, and is a renewal of the most degraded and degrading form of Roman marriage.

Marriage by the law of Scotland is considered merely a civil contract, requiring only the deliberate consent of both parties for its completion; so that it is sufficient for obtaining a decree in the courts of that country, that the parties have at any time and any place expressed their deliberate consent *per*

[p] Dodson's Report of Sir W. Scott's judgment in Dalrymple v. Dalrymple, Appendix, p. lxxvii. Dep. of David Hume, Esq.

[q] Dodson, p. xxix, xxxii.

verba de præsenti to be married. It is not necessary that the consent should be delivered before witnesses either public or private: it may be sufficiently attested by writings which are not and need not to be of public record; and of which the existence may be proved upon the oath of either of the parties, on the principle that it shall not be in the power of the one to rescind the engagement, by suppressing or destroying the evidence. It is only necessary that the consent be made reciprocally, by both parties, with a mutual understanding and intention of contracting matrimony. When the consent is thus mutually made, it cannot be vitiated by the conduct of either party; and it is of no avail, if the writings containing the consent are suppressed or destroyed. So far is this principle of mutual consent carried, that though the marriage which it affirms cannot be dissolved, proof may nevertheless be exhibited of a secret understanding between the parties, that they did not mean to contract marriage; and "their mutual declarations may be counteracted by other writings of a contrary tendency, or by acts and deeds of the parties, affording real evidence to the contrary, and in all these cases the declarations of the parties must be taken, with all the attendant circumstances; and if there is reason to conclude, from the expressions used by them, that both or either of the parties did not understand that they were truly man and wife, or that the declarations were intended for a particular purpose, and not with a view of constituting the irrevocable union of marriage; all this will enter into the question, whether the parties are married, or only under an obligation

to marry. But it is almost impossible to say *a priori*, in what manner and to what extent in all circumstances these qualifications or limitations are to operate[r]:" and it must be admitted that Scottish marriages "are often of so loose and singular a nature, as to render it frequently a matter of difficulty for the courts to determine whether there has been a marriage or not[s]." The law may presume that the parties, having formed a connexion of which the object was marriage, would not proceed to consummate unless with the same view; but this presumption cannot be said to be *præsumptio juris et de jure*, because it may under certain circumstances be obviated by contrary evidence: e. g. if the man and woman were, previously to the copula, to interchange written declarations of their having determined not to marry each other[t]." Even if a man should attempt a second marriage, to which the wife should make no objection, although her taciturnity and apparent acquiescence in his designs, her negli-

[r] Dodson, p. xliii. Dep. of Rob. Craigie, Esq.

[s] Fergusson, p. 345. In a case of declarator of marriage, M^cGregor v. Blach M^cNeil or Jolly, before the Court of Session, Jan. 25, 1823. Pursuer had inveigled defender, then receiving the addresses of Jolly, to the house of a Mr. Robertson, at a late hour of the evening, and intimidated her by threats to be present at a ceremony of marriage. Pursuer laid no further claim to defender as his wife, acquiesced in her subsequent marriage to Mr. Jolly, and made no objections, till he raised the action of declarator of marriage, on the defender's coming into possession of considerable property. The commissaries repudiated the second marriage: the Court of Session were divided in opinion, and required further evidence. Times.

[t] Dodson, p. xlix.

gence to urge her proper claims, would not give validity to the second marriage, or dissolve the conjugal relation already subsisting; it might throw suspicion on the intention with which the original marriage was contracted; and in any case where the first marriage was doubtful, and could only be inferred from collateral circumstances, it would be admitted in proof that she had never intended or understood herself to be the man's wife[u]. The concealment of the marriage, being held to imply that there had been no intention of contracting marriage, would justify a third person contracting marriage in good faith, and without knowledge of the subsisting engagement; but it is a disputed point whether it would legitimate the offspring[x]."

It would be vain to offer objections to such a scheme of matrimonial law, and invidious to compare it with the clear and definite system which regulates the marriages of England; but it is impossible to overlook the animadversions which the lawyers of Scotland have pronounced on the merely civil contract of marriage. "There are learned and ingenious persons in that country, who appear to think the rule

[u] Dodson, p. lxxxiv.

[x] Ibid. p. lii, lxii. "The putative regular marriage indeed entitles the offspring of that marriage to hold the status of legitimacy, and it is understood that this has always been the rule. As to patrimonial rights of succession, would they not however necessarily be excluded by a decree sustaining the previous irregular marriage by promise, *subsequente copula*, of their father? Or ought such decree only to have effect from the date at which it is pronounced? No decision, it is believed, has yet gone this length in favour of the issue of the regular marriage." Fergusson, p. 461.

of the law of Scotland, that the contract *de præsenti* does *ipso facto et ipso jure* constitute the relation of man and wife, too lax, and to wish to bring it somewhat nearer to the rule which England has adopted[y]." They are divided in opinion whether the mutual declarations are the evidence or the constituents of marriage, and they deny that they have the solemnity of formal deeds. It is affirmed on high authority that "private consent is not the *consensus* the law looks to. It must be before a priest or something equivalent: they must take the oath of God to each other; a present consent not followed by any thing may be given up; and if so, it cannot be a marriage[z]." It is thought again, that declarations of marriage, interchanged privately and without the intervention of witnesses, are not sufficient *rebus integris* to constitute a valid marriage; and that there is no authenticated case of the validity of such consent even when expressed verbally before witnesses[a]. It is not therefore unreasonably contended, that marriages celebrated *in facie ecclesiæ* have at least superior advantages, in respect of validity and confirmation, to those which originate in promise followed by copula; that however the promise and subsequent copula may constitute an obligation to marry, from which the party is not free to resile, the fact of a second marriage, duly proclaimed and regularly celebrated *in facie ecclesiæ*, before the commencement of a suit of declarator of marriage, would be a legal impediment, sufficient to prevent a

[y] Dodson, p. 58. [z] Erskine: quoted by Dodson, p. clxxv.
[a] Dodson, p. ccxiii. Dep. of Adam Gillies, Esq.

decree affirming the former marriage, and would defeat the power and obligation of fulfilling the prior engagement[b]. The sacerdotal benediction is by no means indispensable in Scotland; but it nevertheless constitutes the most regular, the most unexceptionable, and the most valid form of contracting marriage in that country[c]: but such is at the same time the obscurity and uncertainty which hangs over the whole law of marriage, that there is an increasing facility in the courts to admit evidence in control or explanation of the written declarations of parties[d]; and cases may occur, in which, as marriage *in facie ecclesiæ* is not necessary to constitute the matrimonial union, the administration of a clergyman may be superseded by the exhibition of proof, that before the celebration there had been an interchange of mutual declarations, that the ceremony was to be effected for a totally different purpose, and should not be binding upon either of them[e].

The mental reservation, which can vitiate the

[b] Dodson, p. ccvii, ccviii. [c] Ibid. p. liv. [d] Ibid. p. lxxxii.

[e] Ibid. p. xxxi. In the case of M^cInnes against Moore, which came before the House of Lords upon appeal, in the year 1782, the facts were, that the man at the woman's desire had signed the acknowledgment, not for the purpose of making a marriage, but merely as a cover to serve another and a different purpose mutually concerted between them; namely, that of preventing the disgrace arising from the pregnancy of the woman. The commissaries and the Court of Session had found the facts relevant to infer a marriage, but the House of Lords considering the transaction as a mere blind upon the world, and that no alteration of the *status personarum* was ever intended by the parties themselves, reversed the sentence and pronounced against the marriage.

public and ostensible act by the secret understanding, is equally offensive to the maxims of civil policy, which is deeply interested in ascertaining the validity of marriage, and to the purity of the Christian religion, which is abhorrent of every kind of equivocation and reserve. It adds another objection to the licence of a merely civil contract, which admits such collusion and abuse, and of which the claims should not be advanced in opposition to the sacred sanctions of marriage, without the most mature consideration of the difficulty of ascertaining the validity and of the actual uncertainty of marriages in Scotland, and of the objections which her own lawyers have alleged to the prevailing system, and the readiness with which they have fallen into the doctrines of the English Church, and insisted upon the divine institution of marriage, its religious ratification, and the circumstances, especially its permanency, by which it is distinguished from other contracts. These are however points, to which it is not necessary again to turn the attention of the reader, to the neglect of the more immediate consideration of the practical insecurity of marriage considered merely as a civil contract. The instability of the contract of marriage in Scotland may be compared with the facilities afforded by the Scotch law for the dissolution of marriage upon the ground of desertion or non-adherence, and of adultery.

" But neither adultery nor wilful desertion are grounds which must necessarily dissolve marriage; they are only handles which the injured party may take hold of to be free . . . . and no divorce can proceed which is carried on by collusion between the

parties, lest, contrary to the first institution of marriage, they might disengage themselves by their own consent." The difficulties of preventing collusion appear however to have exceeded all the regulations of the courts.

"Where either party has deserted from the other for four years together, that other may sue for adherence. If this has no effect, the Church is to proceed first by admonition, then by excommunication; all which previous steps are declared to be a sufficient ground for pursuing a divorce. *De praxi*, the commissaries pronounce sentence in the adherence after one year's desertion; but four years must intervene between the first desertion and the decree of divorce. The legal effects of divorce on the head of desertion are, that the offending husband shall restore the *tocher*, and forfeit to the wife all her provisions legal and conventional; and on the other hand, the offending wife shall forfeit her *tocher*, and all the rights that would have belonged to her in the case of her survivance[f].

The marriage is dissolved by sentence of divorce for non-adherence, and the parties are free to marry whom they will. Upon this point the law of Scotland differs from that of England, in making non-adherence a ground of separation, and in extending the sentence of separation to a dissolution of the marriage. The statute against bigamy, 1 Jac. I. c. 11. exempts any person, whose husband or wife shall be continually remaining beyond the seas for the space of seven years together, or shall absent himself or her-

[f] Enc. Brit. Art. Law (of Scotland,) part iii. c. 1. s. 6.

self for the same period, in any place within his Majesty's dominions, the one of them not knowing the other to be living within that time, from criminal prosecution, if he or she shall marry during the life of the other: but nevertheless, if the absent party shall be alive, not only will the offending party be liable to punishment in the spiritual courts, but the second marriage is undoubtedly void in law, and must be so declared by that court, notwithstanding the consequences which would thus attach to the party, with whom a second engagement had been made, though altogether innocent, and to the issue of that connexion[g].

In cases of cruelty, the sentence of the Scotch courts, as under the English law, imports only separation from bed and board.

It is doubtful how far the principle of the indissolubility of marriage was received into the ancient law of Scotland, which was gradually relaxed, first to favour the party injured by the adultery, and afterwards with no other reservation than the interdiction under pain of nullity of the marriage of the adulterer with the adulteress[h]. However the capital punishment in cases of flagrant guilt may have fallen

[g] Quarterly Review, No. xlix. p. 268.

[h] In the court of Session in Scotland, it was an inherent part of the practice in cases of divorce, to inhibit the criminal parties from intermarrying. That practice had been evaded by libelling that the adultery had been committed by an unknown person; but the court of Session corrected the evasion and restored the practice, by obliging the suitors to libel the adulterer by name. Woodfall's Parl. Rep. vol. xxii. p. 233.

into desuetude, adultery is in Scotland held to be a criminal offence, cognizable by the criminal courts, and liable to various penalties at the discretion of the judge; nor is the criminal process precluded by the civil action for divorce. The ordinary courts are open to these actions, and the authority of their sentence extends, not only as in England to separate the parties *a mensâ*, but to dissolve the marriage and discharge the parties *a vinculo*.

"Ever since the date of the Reformation, divorce *a vinculo* by judicial sentence has been a very important part of the Scottish consistorial law. Previous to that date, there was some evidence to shew that it had not been unknown in the practice of the consistorial judicatures of the Catholic Church in that country; and in the authentic statutes and precedents of the common law, no reference appeared to the existence of an opposite rule in more ancient times. That remedy for adultery therefore was regarded by the whole people of Scotland as their undeniable right . . . . the substitution of the inferior redress by separation *a mensâ et thoro*, for the greatest of conjugal injuries, would, according to the national habit of thinking, and to the principles of honour, morality, and religion, which prevail in Scotland, be most unsatisfactory. In every rank the injured parties usually conceive it a duty to expel the pollution of adultery from their families and bosoms. It is the universal opinion of the Scottish people, that the innocent party could not without injustice be compelled afterwards to submit, under any modification, to the bond of marriage, which in

that situation could only subsist as an intolerable burden and grievance[1]."

The force of this popular prepossession is abated by cases of remission of the injury, contemplated by the law: and it is of importance to observe its operation and effects.

"The conjugal relation has stood not less, but infinitely more, secure and sacred, since the religion of the kingdom became protestant, and since separations *a mensâ et thoro* for adultery, which were extremely common under the popish jurisdiction, fell into total disuse. While it had been competent and open to persons so injured, in whatever rank of society, to obtain divorce *a vinculo*, the number of actions, in proportion to that of the population, seemed to have remained nearly the same at all periods, since the commissaries were first appointed in 1563, down to the present time. The procedure

[1] Fergusson, p. 196. In the appeal cause, Anderson v. Marshall, the Lord Chancellor said, that it was the course of practice in the commissary court of Scotland, to admit the evidence of persons who had committed adulterous practices with the party charged in the libel, in support of the charge; but to repel the evidence of those persons when called to give their evidence in defence of the defender. His Lordship described the extreme laxity of the practice of Scotland, in cases of adultery; it being deemed sufficient to charge the party libelled with having committed divers adulterous acts, in any given three years, with divers persons, in divers places; and upon that loose charge to proceed to adduce proof and examine witnesses: but within a few years back this practice had been corrected, and the charge was obliged to contain specific and distinct allegations of the facts, time, and place, charged by the accuser. Woodfall's Parl. Rep. vol. xix. p. 515.

too had been always so conducted, as not to offend against decency, or lead to corruption of manners by the infectious exhibition of profligacy in the higher ranks of society. Hence the estimation of the privilege of judicial divorce for adultery was so high in this kingdom, that a few examples of forfeiture, incurred by the innocent act of contracting marriage under the law of England, could not fail to operate as a discouragement to intermarriage between citizens of Scotland and their fellow-subjects of the British empire, and as a temptation to the former to prefer illicit connexions to lawful union, when residing out of their own country. For the peculiar and novel hardship of being thus obliged without fault to remain united to an adulterous partner for life, would undoubtedly be deemed both galling and degrading in the extreme[k]."

In this partial view the effect of the national prejudice is entirely negative: it has not promoted matrimonial virtue; it has not abated matrimonial sin; it has thrown the faults of all ranks into one indiscriminate mass; and it has been the occasion of a singular infatuation of mind and depravity of affection in suggesting the preference of a connexion of positive guilt and lawlessness to an honourable union, of which the perpetuity may by a remote contingency, a contingency not to be anticipated, become offensive. The preference however, if it exist, may be ascribed not more to the prejudice in favour of divorce for adultery, than to the practical effect of the received opinion of the dissolubility of

[k] Fergusson, p. 198.

Scottish marriages. A very different view of the whole case is taken by Mr. Commissary Ross: "While the prospect of obtaining a divorce may in many cases have been the very inducement to the crime, I am fully persuaded we are by no means indebted for the degree of purity still maintained amongst us, in regard to the marriage relation, to the privilege competent to the injured party of obtaining a divorce. If we are indebted to any thing beyond the far more to be relied on security arising from the moral and religious principles of our people, it is to the terrors of the criminal code[1]."

The popular prejudices in favour of divorce are opposed by the most eminent authorities in the Scottish law; and although the "idea of a sacrament in marriage and its quality of indissolubility are in their municipal institutions alike disregarded, nevertheless, in strict conformity to the decretals and other books of the more ancient canon law," and upon the basis of scriptural authority, "they reverence marriage as being of divine institution, and regard it on that account as a sacred, irrevocable obligation. . . . Lord Stair, in particular, the great institutional writer of Scottish law, in treating the subject of marriage constantly speaks of its perpetuity, and of its being a contract as well of natural law as of divine origin." Lord Bankton and Mr. Erskine maintain the same doctrine.

"The genius and tendency of the law of Scotland is therefore clearly in favour of the perpetuity of marriage. It encourages the duration of the mar-

[1] Fergusson, 349.

riage union, and discourages the dissolution of it. It affords every facility towards entering into the marriage state, and views with suspicion and alarm every attempt to dissolve it. . . . A jealous anxiety to disregard every admission marks every step. Hence no judgment passes by default without proof, and if the defender declines to appear, the court are nevertheless bound to proceed with the same formality as if he were present and had maintained the keenest opposition. In the same spirit every obstacle that presents itself is eagerly laid hold of to support the marriage and prevent its dissolution.

"It is true indeed that in certain circumstances the dissolution of the marriage contract is permitted; but it will be particularly observed, that the law of divorce in Scotland is barely *permissive*, not *imperative:* and nothing can afford a better illustration of what law sometimes does, when, as in the case of divorce, it tolerates what it neither commands nor approves[m]."

When therefore it is said, that "in Scotland the marriage contract of the parties is, *quamdiu se bene gesserint*," the expression is very inaccurate, and can be interpreted only in accommodation to the popular prejudice and to the general dissolubility of marriage. Divorce is in reality a deviation from the original institution of marriage, which was intended to be perpetual. "The duration of marriage," says Lord Stair, "is perpetual, and the dissolution of it is only natural by death." Some writers indeed maintain, that the act of adultery operates *ipso jure*

[m] Fergusson, p. 316, 317.

a dissolution of the marriage, but it is certainly not so in Scotland. "Adultery and desertion do not annul the marriage, but are just occasions upon which the persons injured may annul it, and be free: otherwise, if they please to continue, the marriage remains valid." Parties may not only exercise the right of claiming a divorce or not as they please, but they may renounce it at any time subsequent to the act of adultery, and, without any renunciation of it, they may even be deprived of it by the law itself, in the event of grounds arising for presuming a *remissio injuriæ*. The action of divorce itself is of the nature of a pure personal cause of complaint, which neither the public nor any third party upon even the strongest ground of patrimonial interest will be allowed to plead. Divorce is no public vindication of the law, but a private remedy merely, and for private purposes. It is a remedy which the injured party alone can seek, and if that party is willing to abstain from demanding it, the marriage will still subsist; and collusion between the parties, *remissio injuriæ*, and other personal bars, are received as proper exceptions to the act of divorce[n].

These are points of which the investigation belongs not of personal right to individuals, but is reserved for the deliberation of the courts, before which the action is brought, and which will use their utmost endeavours to prevent the collusion of the parties in a suit in which there is more temptation to collusion than in any other case, and such extraordinary facilities of concealment as almost to preclude detection.

[n] Fergusson, 288, 353, 317, 318.

The office of the Procurator Fiscal was of old concerned in all cases of divorce, and he is now engaged under the direction of the courts in the investigation of reasonable grounds of suspicion, the detection of collusive agreements entered into not only by the parties themselves, but by the means of their agents or parties in their confidence, and the administration to them of the oath of calumny.

" Collusion, it is evident, is more likely to take place often in actions of divorce, than in causes of any other description. But the parties who commit this offence against the course of justice have such facility of concealment, and the enquiry is of so difficult and unpleasant a nature, that the records of the consistorial courts of Scotland do not perhaps exhibit a single attempt to detect this mal-practice, which has been successful in the result. The commissaries however have extended the enquiries as to collusion under the oath of calumny, which were regulated by no statute, and rested upon the authority merely of their own practice. Thus the formula of that oath now in use has been made to embrace all the following points: Compeared A. B. pursuer, who deposes; That there has been no concert or collusion between him and the said defender in raising this action in order to obtain a divorce against her; nor does he know, believe, or suspect, that there has been any concert or agreement between any other person on his behalf and the said defender or any other person on her behalf, with a view or for the purpose of obtaining such divorce. All which is truth, as the deponent shall answer to God.

" Still however there was reason to think, that by

previous arrangement of their conduct parties pursuers, who were aware that this oath must be taken, found no great difficulty in preparing for that test. Occasionally indications appeared in the course of the procedure of opportunities to discover, whether a concert had really taken place between parties in this situation to obtain a divorce, as an object both of mutual desire and mutual endeavour. But the judges of the court could not themselves prosecute any extrajudicial investigation, or do more than decide upon such matter as might be laid before them[9]."

There can be little doubt, that in very many instances the mutual desire of separation has succeeded in overcoming the moderation of the law, and defeating the circumspection of the courts. It has been strongly argued in respect of foreign consorts prosecuting a suit of divorce in the courts of Scotland: "Unhappily for the settlement of the law and the satisfaction of the public mind, that tenaciousness of right and privilege which invigorates the suitor in almost every other judicial contest is in many cases of the present description altogether wanting. Here alone the litigious spirit is weak, and the ingenuity, if roused at all, is usually exercised in extenuating some relevant plea, or perhaps in the still more reprehensible endeavour by mutual, if not concerted, efforts to obscure the facts and mislead the judge. Should the object of the suit be agreeable to the secret wishes of both parties, although no collusive acts may be discovered, and perhaps none have taken place, all that is done or thought of on either side is

[9] Fergusson, 363.

to go through the necessary forms and ceremonial of law, so that the decree of the judge may proceed with somewhat of the wonted solemnity. So far from being a real adversary, the defendant is at best but a willing victim of the law. Whatever obstacles may occur, are usually interposed not by the suitors, but the court, who will, as far as depends upon them, guard against abuses of their authority, by receiving no concession at the expence of the law, and by thwarting all attempts to defraud it. But even 'though wisdom wake,' the means which it can thus employ fall far short of that ample security which is afforded on other occasions. No sooner is a judgment obtained, which suits the views of the parties, than all procedure suddenly stops; no desire is shewn to have the case reviewed; no redress sought by the losing side; no complaint to superior courts; all is silent and acquiescing[p]."

Writers, who would advance the claims of the merely civil contract of marriage, or who would increase the facilities of divorce by conveying to the ordinary courts the power of dissolving marriage, cannot reflect too often or too deeply on the state of matrimonial law in Scotland. Whatever may be thought of the moderation of that law, it does not appear to give any satisfaction to the persons who are most familiar with its administration. While the lawyer, in conformity with his own pure and refined conceptions, would elevate the civil contract, and invest it with the virtue of a divine institution, and would at the same time restrict the licence of divorce by

[p] Quart. Rev. No. xlix. p. 230.

insisting on the perpetuity of marriage, the courts are compelled to throw equal suspicion on the most irregular and the most formal celebration, and tacitly to connive in collusive agreements for divorce which no circumspection can penetrate, and no power can resist. The natural result is extreme uncertainty in the contract of marriage, and extreme facility in the practice of divorce. Such flexibility of the law is unknown in England, where every man is assured of the validity of his own marriage, and few men venture to speculate on the possibility of its dissolution.

In these respects England may derive a lesson of useful admonition from the sister kingdom: but the Scotch principle of the dissolubility of marriage demands not the faint contemplation of the theorist, but the immediate interest and interposition of the legislator, from the jurisdiction which has been claimed to the Scottish courts for the dissolution of marriages not contracted under the Scottish law. Persons married in England or Ireland, and pledged under the law and ritual of those countries to an indissoluble engagement, or at least not entertaining at the time of the contract the remotest views of its dissolution, have by an accidental or intentional residence in Scotland placed themselves under the jurisdiction of her courts, and laid claim to the redress which those courts are competent to afford. Hence arises an important question, whether respect is due to the law of the place of contract, which holds the indissolubility of marriage, or to that of the place of actual residence, in which the offence is committed, the redress is claimed, and the dissolu-

tion of marriage is approved[q]. On this point the courts are divided, and the question is agitated with all the acuteness of legal erudition. The question has been submitted to the House of Lords, but not in such a form as to obtain a decision. An opinion only of high authority has been delivered, that nothing short of an Act of the legislature can dissolve an English marriage, and the opinion has been confirmed by the sentence of the twelve judges on a point reserved from the court of Assize at Lancaster, in which a man divorced by the sentence of the Scotch court for adultery and married to another woman was indicted for bigamy and convicted. If the same man, having been divorced in Scotland, had been again married, and continued to reside in Scotland, the law of that country would have recognized the marriage, and protected its civil effects, which the English court was so far from respecting as to admit the proof of bigamy[r].

It is less necessary to enter into the principle of the legal question, than to state its practical operation and effects.

"It must be evident, that the claims to mutual

[q] The Scotch courts also entertain the suit of the woman, which has been very seldom admitted in the parliamentary divorces of the English law, and thus entitle her to a remedy to which she has no right in her own country, on which she could not have calculated, and in the refusal of which she is deprived of no privilege, but is merely debarred from taking an accidental advantage which must have been always foreign to her thoughts. Quart. Rev. No. xlix. p. 253.

[r] Fergusson, p. 108, 390. Quart. Rev. No. xlix. p. 267.

forbearance and respect, which the *jus gentium* supports between independent nations, were infinitely strengthened and augmented in this case by the peculiar nature of the connexion between the kingdoms of Great Britain. It is equally evident, that there is no subject upon which it is so essential that these claims should receive due attention, as the municipal laws of marriage and divorce: for while the three nations of England, Scotland, and Ireland, politically form one people, their several municipal rules are so discordant as to afford great temptation to married parties of the other countries to seek the dissolution of their conjugal relation in Scotland, and thus to defraud the law of England. It has been seen in the case of Lolly, that a divorce *a vinculo* of an English marriage would not protect an English party from the pains of bigamy for marrying again in England. But a second marriage of such a party in Scotland is valid by the law of this country. Hence the most distressing collision must frequently arise, and endless contests of the most painful and injurious description are to be apprehended upon the rights of legitimacy and succession among the descendants of such parties[s]. The spouses might still be held as bound to each other in England, although declared free in Scotland: subsequent marriages might thus be considered valid in one country and null in the other, to the great danger of the parties, and with the most fatal effects to their offspring and to the good order of society[t]."

[s] Fergusson, p. 154.

[t] Fergusson, p. 38. Compare p. 41. Thus "persons may at the same time be married in one place and unmarried at another;

"It is at the same time but too plain, that the dissolution of English marriages by the Scottish divorce for adultery must operate as a public and general invitation to all the married of the sister kingdoms, who are tired of their union and profligate in their manners, to come into Scotland and pollute the country with their crimes for the very purpose of regaining freedom. The records of the consistorial courts within the last ten years afford too much reason for believing that the danger is not ideal, and it is easy to foresee, that, if the practice of granting such divorce in these cases shall be once fully established, the evil must increase to a degree infinitely prejudicial to the purity of morals among the people of Scotland[u]. There is no injury that can result from the denial of divorce to persons in this situation which can in any degree equal the shock which the public decency and the moral feelings of the country must infallibly sustain, by accustoming its inhabitants to the spectacle of crime under a new and unheard of aggravation. Among the cases, which have of late years occurred, of divorces sued for in this court, it is much to be feared, that they have witnessed this crime, the commission of which they had hitherto been led to consider as originating in the impulse of guilty passion, rise a step higher in the scale of moral depravity, and actually perpetrated with wilful, deliberate, and daring

be entitled by this law to important privileges, be obnoxious by that to degradation and punishment—a situation productive of unspeakable distress and disorder inextricable. Quart. Rev. No. xlix. p. 256.

[u] Fergusson, p. 110.

profligacy, for the express purpose of obtaining an object denied to the parties by the laws of their own country. This is to exhibit a specimen of depravity so shameless and so utterly abandoned, as to admit of no adequate terms of reprobation; and were the case at issue on this point alone, I think a court would do well to pause before it pronounced a decision that could lead even indirectly to such alarming and revolting consequences[x]."

The strong predilection for the dissolubility of marriage, which prevails in Scotland, would render it highly impolitic to interfere with that principle under the proper jurisdiction of the Scottish courts, or to accelerate its amendment, except on the suggestion of her native writers, and in accordance with the improved apprehension of the people on the true state and law and doctrine of marriage and divorce. But on the question of English marriages, the unseemly division of court against court and judge against judge; the official execution of sentences of divorce, rather dictated by the higher than approved in the inferior courts; the jealousy with which such suits are entertained; the collusion with which they are conducted; and the fatal effects which they are reported to produce;—all agree in recommending the necessity of revision and reform: and without balancing or compromising the principles of dissolubility or indissolubility, respectively maintained by the Scotch and English laws; without waiting the contingency of a decision in the House of Lords, and the accumulation of disputed and doubtful cases in

[x] Fergusson, p. 356.

the interval, it could hardly be offensive to the courts of Scotland, if a legislative enactment should retrospectively affirm the validity of all marriages which have been celebrated in consequence of sentence of divorce, awarded in the courts of Scotland, and prospectively restrain the jurisdiction of those courts, in respect of foreign marriages, either altogether, or in cases where the parties have not been resident in Scotland for a period of years to be defined. Such a measure would at once sustain the great principle of the indissolubility of marriage held by the English law, and obviate the just objections of Scottish lawyers to their dissolution[y].

The same Act might take away from the English law the anomaly of the marriages at Gretna Green, and make a definite residence of one of the parties in Scotland a preliminary condition of the validity of the civil contract.

[y] See Quarterly Review, No. xlix. 271, 272. where it is admitted with some hesitation; "Perhaps it is one of those emergencies which call for a direct and declaratory provision by the legislature: for the courts of justice may be altogether incompetent to reconcile these contradictions; they are merely interpreters; their hands are tied by the subsisting law."

CHAPTER VIII.

THE LAW OF RAPE, SEDUCTION, AND BASTARDY.

THE law of Moses was, in the strictest and most proper and original sense of the term, a *penal* law; providing for every offence an appropriate punishment, and for every injury a suitable redress, compensation, or equivalent. This character of the Jewish law is distinctly seen in the various judgments which it pronounces on the several violations of the law which regulates the intercourse of the sexes. The adulterer and the adulteress, upon conviction, are condemned to death; and the waters of jealousy are appointed for the trial of the woman that is suspected of adultery, and their operation is suspended when the husband himself is guilty of the crime. If a woman betrothed is violated, she and the ravisher are capitally punished, if the crime is committed in the city, where the woman might obtain assistance; otherwise the man only is punished, and the woman is discharged, because she had no means of defence. If a woman not betrothed is seduced by persuasion, the seducer is bound to endow and marry her, unless her father should refuse his consent, when he is required to pay the amount of her dower: if he violated her without her consent, he was bound to pay a stipulated sum to her father, and to marry her without possessing the common

privilege of divorcing her at a future time. The laws of seduction and rape are thus delivered by Moses:

If a man entice, *seduce, or deceive by persuasion*, a maid that is not betrothed, and lie with her, he shall surely endow her to be his wife: if her father utterly refuse to give her unto him, he shall pay money according to the dowry of virgins[a].

If a man find a damsel that is a virgin, which is not betrothed, and lay hold on her *and violate her*, and lie with her, and they be found, then the man that lay with her shall give unto the damsel's father fifty shekels of silver, and she shall be his wife, because he hath humbled her; he may not put her away all his days[b].

From this exhibition it will be easy to form an opinion of the different purposes of the two laws, and to appreciate the subtlety of Jewish commentators in explaining and applying them.

It is a just distinction which the commentators have made between these laws, interpreting the former of an act of seduction, the latter of an act of ravishment. It is also justly maintained that the ravisher is bound to marry the woman whom he has violated; but there is a gratuitous interpolation of the law in the hypothetical condition which they annex, *if* she and her father shall consent. The obligation to marry is an act of compensation to the injured woman, which it is not supposed that she will refuse: the injury to the father is compensated by the fine of fifty shekels, which was paid either in

[a] Exod. xxii. 16. [b] Deut. xxii. 28, 29.

addition to the dower, as a penalty for the offence, or as is less probable, in lieu of the dower, without which the ravisher would pay no pecuniary mulct, and the condition of ravished women would be worse than that of other women, but which, as it has been conceived, was not necessary for the maintenance of the woman, nor required as a motive to induce the husband not to put her away, since he had not at any time the liberty of divorcing her. The humane and considerate reason for which he was obliged to marry her, was, that he had humbled her; and the law admitted no exception of personal defects or infirmities, and was in force even though the woman should be blind, or lame, or leprous, and prevented the husband from putting her away at any time or under any circumstances. The Jewish doctors, however, understood the necessity of marriage, of a marriage which was not unlawful, nor interdicted by any law of incest: and to the stipulated fine, which was unalterable, they added other arbitrary fines, in compensation for the shame and dishonour, and any peculiar injury which the woman might sustain, of which the amount varied according to her age, quality, and condition of life[c].

In the case of seduction, of which the former law is interpreted, the seducer was required to endow the seduced to be his wife, which has been explained of giving her such a dowry, that she might be his lawful wife. The Jewish doctors affirm (and the ambiguity of the authorized version agrees with their affirmation) that he was not commanded to marry

[c] Patrick and Ainsworth in loc. Ux. Ebr. l. i. c. 16.

her, although they admit it to be best that he should marry her, but only that he is required to make satisfaction for the injury which the woman has received, by paying so much in the nature of a dower, as would render her fit to be his wife if they should agree: but if either the man or the woman, or the woman's father, should refuse the marriage, and the Jews allege that it was in the power of any of them to refuse it, they suppose that the offender paid, in the nature of a mulct or fine to her father, the amount of a virgin's dowry, which was fifty shekels[d]. According to the more ancient translations, however, the seducer was required, in the redundant and strongest form of Jewish expression, to endow the woman with a dower[e], and take her to be his wife: and the assumed right of the man to refuse her, appears to have been a mere invention of the Rabbins. The law gives the right of refusal to none but the father; and if he shall exercise that right, the man shall in that case pay money according to the dower of virgins. This interpretation is the most obvious and literal, and is supported by the authority of Josephus; who, in adverting to this law, unless he be supposed to have combined the two laws of seduction and rape, says, Let the seducer of a virgin marry her: but if her father shall refuse to give her, let him pay fifty shekels the price

[d] Patrick and Ainsworth in loc. Ux. Ebr. l. i. c. 16.

[e] LXX. *φερνῃ φερνιει αυτην αυτῳ γυναικα.* *Bishop's Bible:* He shall endow her and take her to his wife. *Ainsworth:* Endowing he shall endowe her to himselfe to wife: *Tremell. et Junii.* Omnino constituens ei dotem accipiat eam in uxorem: *adding in the margin, Heb.* dotando dotans.

of the injury[f]. If the father consented, and the marriage was concluded, the dower was paid, but the fine was not demanded.

These equitable provisions of the Mosaic law for the punishment of seduction and rape have not been always neglected in the laws of human enactment. By the law of Solon, rape was punished with a fine of one hundred drachmæ, afterwards increased to one thousand; and the ravisher was compelled to marry the woman[g]. By the Julian law, with the accustomed rigour of Roman legislation, it was pronounced a capital offence: and under the civil law, which comprehended in this name the forcible abduction of women, and the forcible violation of their persons, it incurred a penalty of death and confiscation of goods[h]. The law of Constantine condemned the ravisher to the flames; and although Constantius mitigated the severity of that law, he only substituted another mode of death, and made no alteration of the law in the case of a slave. Jovian also made it a capital offence to ravish a consecrated virgin, or even to solicit her in marriage against the rules of her profession. The Church, which could not inflict the temporal punishment, renewed the more lenient judgments of the Jewish law, which she enforced with a sentence of excommunication. It is one of the Apostolical Canons, as they are called; If any man offers violence to a virgin not betrothed, let him be excommunicated; and he shall not be permitted to take any other wife, but shall keep pos-

[f] Ant. Jud. l. iv. c. 8. s. 23.
[g] Ux. Ebr. l. i. c. 16.
[h] 4 Bl. Com. c. 15.

session of her whom he has chosen, although she be poor[i]. Basil also condemns to a penance of four years the man who should steal a virgin espoused to another man, and detain her against her father's consent; and pronounces a sentence of excommunication, not only upon the ravisher, but upon his family, and the place where he dwells, if they should assist him in the usurped possession of the woman. It is the just inference of Bingham, that when detention with consent was thus punished, the forcible violation of women was a more heinous crime, and censured with greater severity in the discipline of the Church[k].

The law of England declares the forcible abduction of women to be felony, and condemns to imprisonment the man who shall take away an unmarried woman under the age of sixteen years, without consent of parents, with forfeiture of her property during the life of her husband. The law of rape has undergone various modifications. By the Saxon law, in conformity with the Gothic or Scandinavian constitution, it was punished with death. William the Conqueror abolished the capital punishment, for which he substituted castration and loss of eyes; a sentence from which the woman might redeem the man by taking him for her husband, if he would consent to the exchange. By the statute of Westminster in the third year of Edward I. ravishment was reduced to a trespass, if not prosecuted by an appeal within forty days; and the offender was subjected to imprisonment for two years, and a fine

[i] Canon. Apostol. lix. [k] Eccl. Antiq. b. xvi. c. 11.

at the pleasure of the king. This lenity produced the worst effects, and the offence was within ten years afterwards made felony, and the benefit of clergy was taken away by statute 18 Eliz. c. 7.[1] This is indeed a wide deviation from the moderation of the Jewish law; and yet, no man, however he may regret the extension of capital punishments, can contemplate the crime of rape in all its aggravations, and the necessity of preventing it by every possible means, without approving the judgment of Sir Matthew Hale, that "rape is a most detestable crime, and therefore ought severely and impartially to be punished with death[m]," upon clear and sufficient proof and evidence of the fact.

It is remarkable, that while the provisions of the Jewish law are exceeded in the punishment of rape, they are entirely disregarded in the English law of seduction, of which the legal consequences bear no proportion to the nature of the offence, and cannot be compared with the laws of other countries. The alternative of marrying the woman seduced, or of providing a dowry, was introduced into the papal laws, and especially prevailed in the courts of Spain and Italy; but the offence was more heavily punished by the civil law, by forfeiture of a moiety of the goods, by imprisonment and banishment, and in some extraordinary cases by capital punishment. The law of Constantine included the seducer not less than the ravisher in its atrocious judgments, under which the woman's confession of consent was fatal to herself, without exculpating the partner of

[1] 4 Bl. Com. c. 15. [m] Ibid.

her crime; the attempt of her family to dissemble the injury, or remove the shame by a subsequent marriage, subjected them to exile and confiscation; and the consequences of the sentence were extended to the innocent offspring of such an irregular union. But whenever the offence inspires less horror than the punishment, the rigour of penal law is obliged to give way to the common feelings of mankind, and the most odious parts of this edict were softened or repealed in the subsequent reigns[n]. The law of Solon, whose wise legislation was often drawn from the fountains of Siloam, punished the seducer as well as the ravisher by a fine, permitting also the father to sell the daughter, and the brother the sister, who should be convicted of the offence. The apparent inconsistency of this law, in suffering the same offence to be punished by fine in the one sex and by slavery in the other, is noticed by Plutarch, and defended on the ground of the scarcity and consequent value of money at Athens[o].

[n] Gibbon's Rom. Emp. c. xiv. The writer, whose humanity is said to have never slumbered, but when women were ravished or the Christians persecuted, observes, that "the laws of Constantine against *rapes* were dictated with very little indulgence for the *most amiable weaknesses of human nature*: since the description of that crime was applied not only to the brutal violence which compelled, but even to the gentle seduction which might persuade, an unmarried woman under the age of twenty-five to leave the house of her parents." Will any man, with the feelings of a man, subscribe to this sentiment, or class the violence or the gentleness which debauches a woman among the *most amiable weaknesses of human nature?*

[o] Ux. Ebr. l. i. c. 16. "In such specimens of the new comedy of the Greeks as have reached us through the medium of Latin

In attaching a common penalty to the two offences, the Athenian legislator has justified an inference of their equal guilt: and however rape may exceed seduction in atrocity, it does not exceed it in the complicated villainy which designs, or the pernicious results which follow, the offence. The exacerbated passion of the ravisher accomplishes his cruel purpose at a blow, without protracting the sufferings of his victim; the more designing and persevering seducer offers a honeyed draught, which poisons the springs of life, and of which no woman can drink without being reduced to a necessity of dragging out the remnant of life in shame and sorrow, in morbid apathy or reckless desperation. The seduction of a woman cannot be effected without the entire depravation of the moral virtue of the sex, which is founded in chastity; without offering a strong temptation to a life of prostitution, in which the seduced will herself become the seducer of

translations, it is by no means uncommon to find the denouement of the play turning upon the circumstance of an unmarried woman who had become a mother during some of those licentious festivals which occasionally withdrew both married and unmarried persons from the shade of domestic retirement, without being able to specify on whom the rights of paternity were to be conferred. A heavy fine seems originally to have been the penalty for these offences. The injured party had afterwards, according to Hermogenes, the option of becoming the wife of the criminal, without bringing him a dowry, or of demanding his life as a compensation. As the compassionate feelings of the sex very rarely enforced the last clause of the edict, Syrianus assures us, that the right of commutation was rescinded, and only the severer sentence allowed to remain in force." Quarterly Rev. No. xliii. p. 189.

others; or without ruin to her character and reputation in the world, and to her own sense of self respect, of which a woman is so jealous, that in the agonized effort to conceal her shame, she is often known to deny the strongest instinct of her nature, the love of her child. The woman that is seduced is deprived of the means of honest maintenance; she is scorned by the virtuous and courted by the vicious; all her prospects in life are overcast; and she is debarred from the great object of female ambition, a happy and an honourable marriage. The work of the seducer proceeds by the means of fictitious promises, which it is never meant to fulfil; by declarations of passion, which is the cloke for selfish gratification; by exciting a delusive hope of conjugal bliss; by taking the basest advantage of cherished and confiding affection; by acts of fraud the more criminal, as the object is worthless, and the injury irretrievable, both as the woman herself and her family are concerned. The villainy of the seducer hardly admits of comparison, and the most nervous language is incapable of expressing the just sense of virtuous indignation. "All this complication of evil is produced at first by arts, which, if employed to deprive a man of his property, would subject the offender to the execration of his fellow subjects, and to an ignominious death: but while the forger of a bill is pursued with relentless rigour by the ministers of justice, and the swindler loaded with universal reproach, the man who by fraud and forgery has enticed an innocent girl to gratify his desires at the expence of her virtue, and thus introduced her into a path, which must infallibly lead to her own ruin,

as well as repeated injuries to the public at large, is not despised by his own sex, and is too often caressed by the virtuous part of the other. Yet the loss of property may be easily repaired: the loss of honour is irreparable[p]."

"The injury to the family may be understood by the application of that infallible rule of doing to others what *we would* that others should do unto us. Let a father or a brother say, for what consideration he would suffer this injury to a daughter or a sister, and whether any or even a total loss of fortune could create equal affliction and distress. And, when they reflect upon this, let them distinguish, if they can, between a robbery committed upon their property by fraud and forgery, and the ruin of their happiness by the treachery of a seducer.

"Upon the whole, if we pursue the effects of seduction through the complicated misery which it occasions, and if it be right to estimate crimes by the mischief which they knowingly produce, it will appear something more than mere invective to assert, that not one half of the crimes for which men suffer death by the laws of England are so flagitious as this. Yet the law has provided no punishment for this offence beyond a pecuniary satisfaction to the injured family, and this can only be come at by one of the quaintest fictions in the world, by the father's bringing his action against the seducer for the loss of his daughter's service during her pregnancy and nurturing[q]."

[p] Enc. Brit. Art. Seduction. [q] Paley's Moral. Philos. b. iii. pt. 3. c. 3.

"It appears to be a remarkable omission in the law of England, which with such scrupulous solicitude guards the rights of individuals, and secures the morals and good order of the community, that it should have afforded so little protection to female chastity. It is true, that it has defended it by the punishment of death from force and violence, but has left it exposed to perhaps greater danger from the artifices and solicitations of seduction. In no case whatever, unless she has had a promise of marriage, can a woman herself obtain any reparation for the injury she has sustained from the seducer of her virtue. And even where her weakness and credulity have been imposed upon by the most solemn promises of marriage, unless they have been overheard or made in writing, she cannot recover any compensation, being incapable of giving evidence in her own cause. Nor can a parent maintain any action in the temporal courts against the person who has done this wrong to his family, and to his honour and happiness, but by stating and proving that from the consequences of the seduction his daughter is less able to assist him as a servant; or that the seducer in the pursuit of his daughter was a trespasser upon his premises. Hence no action can be maintained for the seduction of a daughter, which is not attended with a loss of service or an injury to property. Therefore in that action for seduction which is in most general use, viz. a *per quod servitium amisit*, the father must prove that the daughter, when seduced, actually assisted in some degree, however inconsiderable, in the housewifery of his family, and that she has been rendered less service-

able to him by her pregnancy: or the action would probably be sustained upon the evidence of a consumption, or any other disorder, contracted by the daughter in consequence of her seduction, or of her shame and sorrow for the violation of her honour. It is immaterial what is the age of the daughter; but it is necessary that at the time of the seduction she should be living in, or considered part of, her father's family. . . .

"Another action for seduction is a common action for trespass, which may be brought when the seducer has illegally entered the father's house; in which action the debauching his daughter may be stated and proved as an aggravation of the trespass. In this action the seduction may be proved, though it may not have been followed by the consequences of pregnancy or the loss of service. But these are the only actions which have been extended by the modern ingenuity of the courts to enable an unhappy parent to recover a recompence under certain circumstances for the injury he has sustained by the seduction of his daughter[r]."

It is obvious that the remedy afforded by this action is one which the necessities of many will prevent them from seeking, and which the virtuous sensibility of others will render them ashamed to obtain, and in the prosecution of which it is only doubtful, whether there is more subtlety in the pleas upon which the charge is pressed, or in those by which it is evaded[s]. Thus the law, which should

[r] Christian's note 13. 3 Bl. Com. c. 8.

[s] Thus "Mr. J. Wilson, in a case upon the northern circuit, was of opinion, that a young woman, who was upon a visit at a

suffer no injury to remain without redress, suffers the greatest to be inflicted without compensation, and leaves the seducer "unwhipt of justice." The Mosaic law, in obliging the seducer to marry the woman whom he had debauched, or, if that should not be agreed to, requiring him to provide a dower, satisfies, as far as compensation can be made, the justice of the case, and establishes a precedent which human legislators may follow with advantage.

The law of bastardy naturally follows the law of seduction, and the offence of the parents results in the shame and dishonour of the children. The Mosaic law takes but little notice of bastardy, except of that peculiar kind of children, born of women whom the Jews were forbidden to marry, whose issue was deprived of the privileges of the chosen family, and partook of the condition of the mother, according to the received maxim of Jewish polity: *Partus sequitur ventrem.* In this respect the law of the Athenian legislator again corresponds with the Jewish law, restricting legitimacy and the right of inheritance to children born of free citizens. This law, after being again and again rescinded and re-

relation's house, and was there seduced, might be considered, in support of this action, as in the service of the father, or as part of his family." Christian's note. In another case, at Carlisle, Aug. 25, 1824, the plaintiff's daughter was seduced by her master, having been hired for a half year, with reserved leave to go where she pleased for one week, during which she went to her father's house, and performed the service, on which it was attempted to ground the action. If plaintiff's daughter being in service is seduced, and returns to her father's house in consequence of the seduction, it has been ruled that the action cannot be maintained. "Dean v. Paul: 5 East, 45."

stored, was eventually established so far that a bastard is defined by the grammarians to be one born of a stranger or an harlot; and a legitimate son one born of a citizen, a wife, and in lawful matrimony[t]. "Whatever temporary glare the histories of an Aspasia, a Pythionice, or a Neæra, might throw over their condition, the great law of nature, which determines chastity to be the first virtue in a woman, could not be superseded by the conventional agreements of society; and Athenian law, to a certain extent, went in accordance with the dictates of nature. To wear a dress of a particular description; to be debarred the use of certain ornaments; to be denied the use of all servile assistance, except from persons of the same class as herself; to be excluded from the services and sacrifices of the temples; and, what to a female mind was perhaps a yet more trying privation, to be excluded from the splendid processions which often preceded those sacrifices, were among the privations to which, if the law was strictly obeyed, every offender against modesty was subjected in Attica. The great objects of Athenian ambition were, strictly speaking, shut against a young man who owed his birth to such a connexion: for he could not exercise the talents of oratory in the senate, or the ecclesia, or the various courts of law. The wit of a Timotheus might turn to the brighter side of the picture, and feel grateful to a mother who had made him the son of Conon: but the tongue, which found itself tied in the public assemblies, no doubt broke out sometimes into pri-

[t] Potter's Greek Antiq. b. i. c. 9.

vate invective against the cause of a privation which to an ambitious and loquacious Athenian must have been peculiarly galling. The free-born Athenian woman, who embraced this profession, immediately lost all her rights and privileges; she ranked in future merely with the wife of a metic or sojourner in Athens; and a consciousness of the degradation thus incurred generally led them, it appears, to change their names, and to annihilate, as much as in them lay, their previous existence[u]."

The Roman law allowed no claim in the spurii to kindred or inheritance on the father's side.

In ordinary apprehension the English word *bastard* denotes a person born out of lawful matrimony, and is compounded of the Saxon words *base* and *start* or *steort*, signifying a base or vile original[x]. The chief incapacity of bastards in consequence of this base original is, that they are in themselves incapable of inheritance, except by particular Act of Parliament, and that, as they have no collateral kindred, they have no heirs but of their own body, and any property which they may acquire, if they die intestate and without issue, devolves if in land to the lord, if in personals to the king. The rule, that bastards should not be admitted into holy orders, and might be refused by the bishop, if presented to a church, a canonical rule derived remotely from a misapprehension of the Jewish law, seems now to be obsolete, and indeed any other regulation than that which civil policy renders necessary, would,

[u] Quarterly Review, No. xliii. p. 198.

[x] Burn's Justice: Art. Bastards, s. 1.

in the innocent offspring of the parents' crimes, be in the last degree cruel, odious, and unjust[y].

By the civil and canon law the bastardy of children was removed by the subsequent intermarriage of the parents. This is still the law of Scotland, and it was proposed by the bishops in the Parliament of Merton, A. D. 1235, that this rule of the Church, derived from the constitution of the Pope Alexander III. A. D. 1159, should be incorporated into the English law, and the proposal was unanimously rejected by all the earls and barons, who were not willing that the laws of England should be changed, which had been hitherto in use and approved. In thus defining the legitimacy of children, and circumscribing the rights of inheritance, by a descent from married parents, the English law in its very rigour consults for the frailty of human nature, offers a motive to quick repentance, protects the dignity of marriage, secures the maintenance and protection of children, and prevents the occurrence of various frauds and partialities which might otherwise be expected to arise[z].

The punishment for having bastard children[a] is under the English law chiefly inflicted upon the woman. "By the statute 18 Eliz. c. 3. two justices

[y] 1 Bl. Com. c. 16. Burn's Eccl. Law: Art. Bastards.

[z] Ibid.

[a] "He that gets a bastard in the Hundred of Middleton in Kent forfeits all his goods and chattels to the king. If a bastard be got under the umbrage of a certain oak in Knolwood in Staffordshire, belonging to the manor of Terley Castle, no punishment can be inflicted, nor can the lord or the bishop take cognizance of it." Enc. Brit. Art. Bastard.

may take order for the punishment of the mother and reputed father; but what that punishment shall be is not therein ascertained, though the contemporary exposition was, that a corporal punishment was intended[b]. By statute 7 Jac. I. c. 4. a specific punishment, viz. commitment to the house of correction, is inflicted on the woman only. But, in both cases, it seems, that the penalty can only be inflicted if the bastard becomes chargeable to the parish; for otherwise the very maintenance of the child is considered a degree of punishment. By the last mentioned statute the justices may commit the mother to the house of correction, there to be punished and set on work for one year; and in case of a second offence, till she find securities never to offend again[c]."

This state of the law is exposed to many objections. Why the woman should be liable to imprisonment, and the man be suffered to sin with impunity; why the punishment, and not only the punishment, but the enquiry, should be limited to cases in which the child becomes chargeable, and no penalty be exacted of "lewd women having bastard children," but able to maintain them for the present, however they may afterwards become chargeable; why security should be required for the good behaviour of the woman, and the man be free to repeat the offence; or what is the benefit of statutory

[b] Is it possible that an ecclesiastical punishment was intended? The Canon 109 of 1603 includes under notorious crimes and scandals, to be certified into the ecclesiastical courts by presentment, adultery, whoredom, incest, drunkenness.

[c] 4 Blackstone, c. 4.

enactments which are seldom carried into execution; are questions which it is more easy to ask than to resolve and to reconcile with reason and with justice. The ecclesiastical law and the spiritual courts have been blamed for their tenderness and lenity to offences of incontinence, which have been imputed to the constrained celibacy of the first compilers of these laws. It is not intended to deny the imputation; but it may be asked, whether the statutory law has improved upon the forbearance of the canonical law; whether it has maintained a less "feeble coercion" of vice, or exhibited a more exact spirit of impartial justice; whether it can be said to prosecute "incontinence, and even adultery itself," as a crime, or to treat them only as civil injuries, requiring and admitting pecuniary compensation. In the law of bastardy the moral offence is made entirely subservient to the civil injury which it may involve; if the parish suffers no immediate wrong, and needs no indemnity, no inquiry is made, no penalty is demanded. To constitute the offence the child must be actually chargeable, and if the mother will discharge the parish of keeping the bastard, it appears questionable whether she can be legally committed[d]. The crime may thus be said to depend on the circumstances of the criminal; and it is the condition of wealth to avoid, and of poverty to sustain, what has been called "the temporal punishment for having bastard children, considered in a criminal light," distinct from "the maintenance of such illegitimate offspring, which is a civil concern[e]."

[d] Burn's Justice: Bastards, s. 6. [e] 4 Bl. Com. c. 4.

It is of importance to observe the progress of these partial laws, and the unworthy anomalies which they eventually involve. The Act 18 Eliz. c. 3. speaks the moral language which is common to the statutes of the age: "Concerning bastards begotten and born out of lawful matrimony, (an offence against God's law or man's law,) the said bastards being now left to be kept at the charges of the parish where they be born, to the great burthen of the same parish, and in defrauding of the relief of the impotent and aged, true poor of the same parish, and to the evil example and encouragement of lewd life, it is ordered, that two justices of the peace upon the examination of the cause and circumstance shall take order as well for the punishment of the mother and reputed father of such bastard child, as for the better relief of every such parish, by charging such mother or reputed father with the payment of money weekly, or other sustentation, for the relief of such child: and if the mother or reputed father shall not for their part observe and perform the said order, that then every such party so making default in not performing the said order to be committed to ward to the common gaol," &c. The merit of this statute is, that it is plain; that it contemplates the perfect offence; that it avows the *offence*, and imputes it equally to the father and the mother; and that it inflicts the *punishment* and the necessity of maintaining the issue upon both parties.

The Act 7 James I. c. 4. is far more partial in its operation, professing in its very title to be "for punishing of lewd women who have bastards;" it is limited to the case of such children as "may be

chargeable to the parish," whose mother may be committed "to the house of correction to be punished and set on work during the time of one whole year; and if she eftsoon offends again, then to be committed to the said house of correction as aforesaid, and there to remain until she can put in good sureties for her good behaviour not to offend again." This Act is repealed, or rather renewed with mitigated penalties, by 50 Geo. III. c. 51. which authorizes the commitment of the woman "for any time not exceeding twelve calendar months, nor less than six weeks," and making it lawful for any two justices of the peace "upon their own knowledge, or a certificate duly authenticated from the governor of such house of correction in which such woman shall have been confined for any space not less than six weeks, of the good behaviour of such woman during such her confinement, and of the reasonable expectation of her reformation, by warrant to order such woman to be immediately, or at the time appointed in such warrant, discharged and released from further confinement."

The statute 13 and 14 Charles II. c. 19. takes no notice of the offence or the punishment, but it has the justice to include in its provisions both the father and the mother: "Whereas the putative fathers and lewd mothers of bastard children run away and leave the bastard children upon the charge of the parish, although such putative father and mother have estates sufficient to discharge such parish, it shall and may be lawful for the churchwardens and overseers of such parish to take and seize so much of the goods and chattels and receive so much of the

annual rents and profits of such putative father or lewd mother as shall be ordered by any two justices of the peace for the discharge of the parish."

From this period it has been the relief, discharge, or indemnity of the parish, and not the punishment or prevention of the crime, which has been the object of the law, of the decisions of the courts, and of the various orders and instruments drawn in conformity with the law. Thus the object of 6 Geo. II. c. 31. was confessedly "not the punishment of the father, but the indemnity of the parish;" and for the same purpose the Act 49 Geo. III. c. 68. after reciting that the Act 18 Eliz. c. 3. is inadequate for the indemnifying of parishes, charges the reputed fathers of bastard children with the costs of apprehending them and of the order of filiation, as well as with the maintenance of the children; and so the order of filiation is made for the relief and indemnifying of the parish and for the sustenance of the child for so long a time as the child shall be chargeable to the parish[f].

In the absence of other penalties, it has been said, that the maintenance of the child is in itself considered "a degree of punishment." In Scotland this penalty falls upon the mother, who is responsible for the maintenance of her bastard child, and this responsibility is faithfully discharged, and the burthen is found to operate as a wholesome example in preventing the offence. In England, where the parish is liable to the maintenance, and requires to be indemnified, the relief, in conformity with the

[f] Burn's Justice.

statutes which have been recited, is thus obtained: "When a woman is delivered, or declares herself with child, of a bastard, and will by oath before a justice of peace charge any person as having got her with child, the justice shall cause such person to be apprehended, and commit him till he gives security either to maintain the child, or appear at the next quarter sessions to dispute and try the fact. But if the woman dies or is married before delivery, or miscarries, or proves not to have been with child, the person shall be discharged; otherwise the sessions, or two justices out of the sessions, may take order for the keeping of the bastard, by charging the mother or the reputed father with the payment of money or other sustentation for that purpose. And if such putative father or lewd mother run away from the parish, the overseers, by the direction of two justices, may seize their rents, goods, and chattels in order to bring up the said bastard child. Yet such is the humanity of our laws, that no woman can be compulsively questioned concerning the father of her child till one month after her delivery, which indulgence is however very frequently a hardship upon parishes by giving the parents opportunity to escape[g]."

The hardship sustained by parishes by their incapacity to compel, is not greater than the injury done to morals and to justice by permitting, the woman to declare her pregnancy before the magistrate, and to cause the apprehension of the man whom she may have occasion to accuse. All the

[g] 1 Bl. Com. c. 16.

statutes which have been recited speak an intelligible language of a definite wrong; of bastards begotten and born out of lawful matrimony; of the mothers and reputed fathers of bastard children; and of the injury from which parishes require to be indemnified from the birth of bastard children chargeable to the parish. It was no common sagacity which led the authors of 6 Geo. II. c. 31. to introduce the preposterous provision of redressing a grievance before it is sustained. Not only "if any single woman shall be delivered of a bastard child, which is *likely to be chargeable* to the parish," but also if she "shall declare herself to be with child, and that the same is *likely to be born* a bastard and to be chargeable as aforesaid, and shall before a justice of the peace charge any person with having gotten her with child, such justice, on application of the overseers, may cause him to be apprehended and imprisoned, unless he give security to indemnify the parish." If the woman complained of the assault, the complaint might be justly heard; the offence of the ravisher would be complete; and if the law took criminal cognizance of seduction, it might be time to commit the seducer to prison: but, while the essence of bastardy as a crime consists in the wrong to the parish, the permissive power conveyed by this statute authorizes the arrest of a debtor before the debt is incurred, the apprehension of a criminal before the crime is consummated. If the woman dies before the child is born, the parish sustains no injury, the man is in custody for no offence which the law can reach. When the bastard is born, the matter assumes an intelligible form; but what is

bastardy by anticipation? or what is an unborn bastard, but a something, which may or may not be; which under the darkest view of the case is only *likely to be;* which, under the various contingencies contemplated by the learned commentators, may never be; which by the marriage of the mother may be born legitimate, or by her acquisition of property may not be chargeable to the parish, and of which the birth in either case is no civil offence? It is not meant to palliate the offence of the father, which calls for punishment; but to condemn the injustice of the existing law, as the law contemplates the offence of bastardy. In this cognizance of offences which are *likely to be*, the law blushes at its own folly, and in shame of its arbitrary enactment annexes a clause, preventing the compulsory examination of the woman: "No justice of the peace shall have power to send for any woman, before she be delivered and one month after, to be examined concerning her pregnancy, nor shall compel her to answer any questions relating thereto." It has been remarked, that this statute insists chiefly upon the civil offence of bastardy, the criminal character of which is more distinctly recognized in 18 Eliz. c. 3. 7 Jac. I. c. 4. and the legal apology for the alterations contained in it is, that one of the purposes of its enactment "was to prevent the justices from proceeding on the application of every lewd woman pretending to be with child, till complaint by the churchwardens[h]." But the objection here insisted upon is, that it admits the evidence of the woman before

[h] Burn's Justice.

the injury is complete (or in the eye of the law has even commenced) by the birth of the child; and it is an aggravation of the offence, if it sanctions, under *any* circumstances, the application of lewd women *pretending* to be with child.

It is doubtful whether such statutes are intended to quench the blushes of ingenuous shame, or founded in the apprehension that such shame is already extinct. It is certainly a fact, which nothing but common experience would render credible, that a woman can be brought so entirely to forget the modesty of her sex, as voluntarily and without compulsion to declare upon oath "that she is now with child, and that such child is likely to be born a bastard, and to be chargeable, and that such a man did get her with child." It is hardly conceivable, that any man, with the feelings of a man, should have devised such a formulary, under the name of an oath, to be dictated to a woman. The most profligate debauchee has never entertained so calumnious an opinion of the sex, as is founded in the fact that this oath is voluntarily taken. The dignity of justice has never been so degraded, as when it is required to administer an oath so disgustingly revolting; and the solemn adjuration, So help me God! delivered with the right hand and the lip upon the Gospel of truth and holiness, so profanely prostituted, as when it is uttered in such a manner and for such an end. It is true, that the woman cannot be compelled: what then must that woman be, who comes forward voluntarily to attest her own shame; to acknowledge a condition which a virtuous woman will not reveal, and which the repentant sinner

would perish to conceal? Or what must be the feelings of a man of honourable principle, when his official duty goads him to tamper with the woman, to make enquiry into the fact, and to induce her to make the requisite confession? Practice and experience may blunt the feelings, and reconcile men to the most offensive offices: and the first rumour of the village gossip is made to justify the preliminary question, if it is not anticipated in a moment of irritation by a voluntary confession.

The privilege of attesting her pregnancy affords to a profligate woman a temptation to perjury, of which she does not fear, and a means of successful intrigue, of which she does not neglect, to avail herself. The very forms of law imply that she may not be in the condition which she avows upon oath, and that the event may convict her of the qualified perjury. The magistrate cannot however refuse to act upon her declaration, and to prevent the "hardship upon parishes" by the escape of the man, he is immediately apprehended upon the information of the woman, and required to find securities to answer the charge. If he cannot find the requisite security, he is liable to be committed to prison, where he may lie for several months, awaiting the several contingencies of the birth of the child, or the woman's marriage, or miscarriage, or death; or the accession of fortune, which enables her to maintain the child; or the proof which time affords, that she was not pregnant, and that she was guilty of perjury in respect of the fact. To prevent the imprisonment, a treaty of marriage is sometimes concerted between the parties, to which, as it completes the indemnity of the parish

likely to be aggrieved, the overseers assent, (and contribute secretly and as far as the law will allow,) and thus all further proceedings are suspended. The child is not *likely to be born* a bastard, and that he is *likely to be chargeable* is a contingency remote from immediate consideration. But what is the marriage which is thus concerted? All ideas of sanctity are excluded by the circumstances of the case, and the absence is compensated by the advantage of making the best reparation to the woman, and healing the wound which public and private virtue has received. But can it be called a voluntary contract, into which a man enters while he is in custody of the constable of the parish or the keeper of the bridewell, and knows that on his taking the woman to wife depends his restoration to liberty or his return to prison? The unseemly answers, and the unseemly conduct, common to such constrained unions, have excited the indignation and disgust of many a clergyman, upon whom the chief penalty is imposed, by the indirect operation of these laws of bastardy, and who alone is sensible of the sorrow, and the shame, and the profanation, which they inflict.

It is perfectly just and right, that the man seducing or seduced should be required, if the circumstances will permit, to marry the woman whom he has debauched. It is a law of the Scriptures, which has been adopted both by Christian and by heathen legislators, and which is recommended on the authority both of reason and religion; but it is a result which the present state of the English law is more calculated to prevent than to promote, or at least to force than to conciliate. It is worthy of the most

serious consideration, whether the law might not be so modified, as to admit the appearance in all cases, and in some to accomplish the reality, of a voluntary contract, which it is known that the parties will frequently concert between themselves, if they are urged by the certain terrors of the law, but not precipitated by the indiscretion of the woman, or the premature interference of the overseer. In Scotland, the good effects of making the woman answerable for the maintenance of the child have been seen to produce increased circumspection on the part of unmarried women. The man also might be rendered more cautious, if he was assured that he could not debauch the virtue or take advantage of the compliance of a woman, without incurring penalties only to be avoided by marriage before the birth of issue; and the general effect of improved energy and simplicity in the law, cooperating with the progress of religious education, and the proper consequence of that education, the renovated virtue of the people, would be the decrease of bastardy, and more prudence and deliberation in the marriages of the poor.

The improvements most immediately required in the law of bastardy are, to abolish the permissive power of examining the woman before the birth of the child; to leave her without enquiry and without redress to the consequence of her offence; to compel the *lewd mothers of bastard children*, whether chargeable or not chargeable, to declare the father within a limited period after the birth; and to subject them in all cases to a solitary imprisonment, under the regulations prescribed by the statute 50 Geo. III. c. 51. This would prevent the possibility

of the woman's perjury in respect of the fact; it would supersede the administration of the obnoxious oath and the unseemly enquiries which are at present allowed; and it would make the woman more cautious of prostituting her virtue in the first instance, and more anxious in using her best influence to consummate the marriage before the birth of the child, which would otherwise be born in bastardy, and of which the birth would be a criminal offence, to be followed by a penal prosecution. The revived doctrine of the crime and the penalty might produce new apprehensions of the nature of an act, which, because it is found to be venial, is too often conceived to be innocent and inoffensive.

The circumspection of the man might also be excited, by making him also liable not only to his proper share in the maintenance of the child, but to a certain penalty, whether of fine or imprisonment, or both, which should be increased by any difficulty in apprehending him, or in procuring the necessary order of filiation in conformity with the Act 49 Geo. III. c. 68. and which should only be obviated by the marriage of the woman before the birth of the child. It is a common practice to commute the maintenance settled in the order of filiation for the payment of a certain sum indemnifying the parish: but it is here proposed to levy a fine in addition to the fixed weekly maintenance, and to regulate the amount of that fine by the circumstances of the individual, so that it should operate with equal force upon men in different conditions of life. A variable fine, paid to the parish as a penalty for the moral offence, and as a compensation for the civil injury, would remove

from the woman the temptation of taking advantage of a wealthy seducer, and from the man of gratifying his passions at the small expence which is incurred in the maintenance of the child.

While bastardy would thus return to its criminal character, the proposed arrangements would not be liable to the objection of removing the necessary indemnity required for the civil injury sustained by parishes, which could hardly fail to be relieved by any revision of the law of bastardy. It is common to complain, and there is but too much reason to complain, of the increase of bastardy, and of the heavy burthen which it imposes upon parishes. The present expences of apprehending the man, and of the subsequent order of filiation; the possibility that the man may from various causes be incapable of making the stipulated payments; the poor compensation which arises from his commitment in discharge of the debt; the frequent loss of the orders of filiation; and the manifold evils which arise from involuntary marriages; are such as, compared with the chances of the infant's life, leave so little for the remuneration of the parish, as to render it very doubtful, whether on the average of cases entire forbearance might not in a pecuniary view be the more profitable course. The parochial injury, however, is the lowest point of consideration; the permanent and perpetuated mischief and misery of forced and imprudent marriages exceed the casual evils of bastardy: and it is apprehended, that if the burden of parochial rates, which in the same degree that it oppresses the rich degrades the poor, shall ever be lightened, the effect must be produced by enact-

ments devised in a very different spirit from the laws of bastardy, and calculated to renovate the moral energies of the people, and to restore them to a state of self respect, and to a proud independence of all resources but the just reward of virtue, honesty, industry, temperance, and frugality.

Entire forbearance might however be neither morally just nor politically expedient; and if any doubt should be thrown on the expedience of the penal fine, it is obvious to answer, without insisting on the sin or the crime of incontinence, which includes the offence of bastardy even before the birth of the child, that bastardy is already and under the existing law of a criminal character, an offence in the too obsolete language of the Statute, contrary to God's law or man's law; and that, as a crime recognized by the older laws, it calls for punishment, and is liable to punishment[1], although the offence is chiefly suspended on the civil injury. The wrong done to the parish is not however to be compared with the injury to the mother, who suffers all the accumulated evils of seduction; or to the child, who is born

[1] "Rex v. Bowen. 5 T. R. 157. W. Bowen, being a private soldier in actual service, was committed on a charge of bastardy, for refusing to give security to indemnify the parish. . . . . The Quarter Sessions ordered him to be committed to custody, and they stated a case upon the preceding circumstances for the opinion of the court of K. B. . . . The court decided that a private soldier might be committed upon such a charge, and that the charge itself was of a criminal nature." Burn's Justice. See also the Term Reports: the substance of the case may be thus stated: Bastardy not merely a civil offence, but a criminal, and before the birth of the child, for it is incontinence. This was the ground of Lord Kenyon's judgment.

either chargeable or not chargeable: in the one case he is incapable of inheritance, the child of no one, born to suspicion and dishonour which he has not deserved, and often through life excluded from connexions which he has the merit to adorn; in the other case he is born a degraded pauper[k], sustained from his very birth at the expence of the parish, educated in a workhouse or an hospital, disowned and rejected from his natural family, often abandoned by his mother, destitute of a friend in whom he may confide, or from whom he may expect to receive control, protection, and advice, and born like the half-castes of India, to the inheritance of "anguish and ignominy, for which the gift of life is no recompence." There is an offence in giving birth to such a child, which should not be followed with impunity, of which humanity and justice demand the penalty, and which every motive of hope and of fear should be employed to restrain.

The evils of bastardy are hardly seen in the busy scenes of the metropolis; in the manufacturing dis-

[k] "St. Nicholas Leicester, appellants, and All Saints', Derby, respondents. This was a case of appeal at the Sessions for Derbyshire: when the court confirmed the order subject to the opinion of the King's Bench upon a special case. The court quashed the order. The question arose upon the removal of an illegitimate child, born in the Black Friars, Leicester, an extra-parochial place, to the settlement of the mother: and the effect of the decision is to establish, that illegitimate children, born in extra-parochial places, are irremovable to the settlement of their mothers, and consequently having no settlement of their own, must be maintained as casual poor by the parishes in which they may happen to be from time to time resident." Public Prints, June, 1824.

tricts the burthen is oppressively felt; but it is in the supposed simplicity of rural life, that there is leisure to contemplate the moral wrong and the legal abuse, and to point out the relief which is required. Magistrates and clergymen in the country have too frequent proof of the offence, and of the necessity of an improved system of control. It is hoped that there is already an improved disposition to make the best reparation for the offence by a voluntary marriage, without the interference of the overseer, and that there is less frequent occasion for the significant presence of the constable, as the witness of a marriage by licence, which is restricted by the Canon to the use of "such persons only as be of good estate and quality," and the fraudulent purchase of which may subject the parties to an action. If there be a progress to improvement, it is desirable that it should be accelerated and confirmed by the introduction of a more efficient and more simple system. The system which has been recommended is grounded in the Scriptural law of seduction, that a man should marry the woman whom he has debauched, or pay a penalty for the offence. When it is known that the only alternative is marriage or punishment, there will be a strong motive to avoid the offence or prevent the penalty; and thus the dignity of marriage may be restored from the degradation of a forced and involuntary contract; and the crime and mischief of bastardy will be restrained.

CONCLUSION.

TO the discussion of the principal and most important questions relating to the doctrine and law of marriage, adultery, and divorce, it is only necessary to annex a very brief recapitulation of the course of argument which has been pursued; and it is hoped, that if the investigation shall result in the exhibition of a clear, consistent, and harmonious doctrine, it must be founded in principles that are true, and certain, and worthy to be maintained.

The principle on which the whole theory is constructed, is, that marriage is a divine institution, and this principle is maintained not only on the common assertion of the primitive writers, and the constant tradition of the Church, but on the combined authority of the Old and the New Testaments, and it is proved by the providential care which has watched over the preservation of marriage, and made provision for its perpetual use in the conveyance of good to mankind. This doctrine is not liable to any imputation of superstition, nor does it involve the inference of a sacramental character. The merely civil contract of marriage, for which some writers have contended in preference to the divine institution, has been shewn not to be held without limitations in the law of England; to be inconsistent with the circumstances under which marriage originated and became the parent not the child of civil society; to place the rights of marriage in subjection to certain restrictions; to weaken its obligations; to make

its permanence to rest on rules of policy and expedience, to the prejudice of that indefeasible perpetuity which constitutes the essence of the relation; and to render adultery a civil injury. The opposite doctrine of the divine institution results in ascertaining and enforcing the practical virtue of marriage, and in elevating the dignity and the holiness of the state.

The terms of the divine institution in fixing the permanence of marriage justify the necessity of a public ratification, of which the origin is as ancient as the practice is universal, and corresponds with the honour of marriage without infringing its simplicity. The holy character and divine origination of marriage also suggest the inference that this public ratification should be marked by religious rites, which are appropriate to the solemn nature of the engagement, and useful in attestation of the covenant, and which, however they may appear to have been neglected in countries whose manners are barbarous, or imperfectly known, have uniformly prevailed in the most civilized nations of antiquity. The New Testament certainly offers no objection to the religious ratification of marriage, and the practice of sacerdotal benediction may be traced in the Eastern and the Western Churches from the earliest ages to the period of the Reformation; and the most ancient and continuous evidence of all men, all ages, and all places, is agreed in upholding those religious forms of solemnization, which are at once the testimony and the consequence of the divine institution. The necessity of the sacerdotal benediction has been familiarized by immemorial

practice to the habits of Englishmen, and been enforced in the most ancient provisions of the law, distinguishing the contract from the ratification, and allowing an efficacy to the one, which it withholds from the other. The public celebration in the Church and the invalidity of the private contract out of the Church were maintained from the Reformation to the passing of the Marriage Act in 1754, which makes no exemption but in favour of Jews and Quakers, and was not designed to contract any privilege previously possessed by nonconformists. The impolicy of acceding to any of the propositions for abating the necessity of conformity in respect of marriage has been examined, and it has been suggested, that all the objections to the use of the ritual may be removed by a judicious revision, without any compromise of the ancient and universal practice of the religious ratification of marriage.

The terms of the divine institution imply the existence of certain impediments precluding and vitiating the contract of marriage, impediments corresponding with the natural sense of propriety, specified in the law of Moses, and recognized in the universal practice of all nations, which have forbidden marriage to be contracted within certain degrees of consanguinity and affinity. There is not the same authority for proscribing the marriages which minors may contract without consent of their parents, and in violation of filial duty, but of which the nullity rests on no better principle than the arbitrary despotism of the Roman economy, and is foreign to the constant tenor of the English law. The nullity of the marriages of the Royal Family

rests on the ground of a very questionable expedience.

The divine institution and religious ratification of marriage give new force to the duties of the relation, which is contracted in terms of the most exact reciprocity, corresponding with the personal unity of the parties maintained in the Scriptures and in the English law; with their community of interest both in temporal and spiritual concerns; with their mutual society, division of domestic cares, and constant cooperation, especially in the instruction of their children; and with the indissoluble perpetuity of the relation, of which the reciprocal duties cannot be neglected without opening a way to recrimination.

The doctrine that marriage is not a merely civil contract, but a divine institution, establishes the sinful character of adultery, which is proved in the prohibitions and the penalties delivered in the Scriptures to be a sin of a very aggravated kind, a sin only less heinous than murder and idolatry. In its practical effects it includes a complication of the basest fraud and perjury, and inflicts an injury upon the woman, the husband, and the children, which cannot be repaired, which cannot be compromised, and which no man who consults his own heart does not deprecate as the worst of sorrow and the worst of shame. The Christian religion appreciates the equal guilt of both parties; it offers no palliation of the offence of either, and pronounces on both the sentence of eternal doom. By the Jewish law the offence was capitally punished in both parties, and the law of the bitter waters afforded a redress in cases of secret guilt, which could not be obtained by

marital infidelity. The criminal character and penal consequence of adultery are approved by the common sense of mankind, and there are but few nations in which it is not punished as a crime. In the earlier stages of the English law, and at the time of the Reformation, its criminal character was also recognized, and the offence was made, or proposed to be made, liable to penal prosecution. With the only exception of a certain justification of homicide committed in retribution of adultery, and of the aggravation of the offence in a clergyman, adultery, in correspondence with the received view of marriage as a civil contract, is made a matter of civil injury, which may be satisfied by an action for trespass, and by the recovery of damages, of which the amount is estimated upon various considerations of the conduct and of the circumstances of the parties. The partiality and inadequacy of this state of the law are too plain to be denied, and various measures have been proposed for restoring it to a more just and equal operation, for recognizing the criminal character of the act, and rendering it liable to a public prosecution and to an appropriate severity of punishment.

The terms of the divine institution assert the indissoluble unity of marriage, of which the perpetuity is established upon reasons worthy of the divine wisdom and benevolence, in making the most effectual provision for the protection of the infirmity of the woman, for the continuance of the necessary solace through the whole period of human infirmity, and for the religious education of the offspring. This essential individuality of marriage

is not destroyed even by the act of adultery, of which divorce is neither the proper penalty nor the necessary consequence, and which, however common in the practice of men, was not in the beginning, is an acknowledged deviation from the law of marriage, and originated in circumstances of remote and impenetrable obscurity. The first authentic law of divorce is a law remedial and restrictive of a prevailing abuse; a reluctant concession to the hardness of the Jewish heart; a permission granted without any approbation for the prevention of greater evils. The fluctuating and uncertain rules which betray the human origin of divorce are especially manifest in the laws of Greece; and however introduced into those of Rome, it was not for a long period adopted into practice, and in the profligacy of the declining empire its facility and extension were made to demonstrate by the most perfect experiment, that "the liberty of divorce does not contribute to happiness and virtue." Under any interpretation the Christian scheme restricts the licence of divorce to one single cause, throwing all the blame of the consequences upon the man who divorces his wife for any other cause; authorizing the practice only by vitiating the effects; requiring clear proof of the adultery, if that be the meaning of the clause of exception; insisting upon the innocence of the accuser, and permitting the man only to marry after the divorce without incurring the guilt of adultery. There are however difficulties in the ordinary interpretation which it is hardly possible to overcome; and it has been argued upon primitive authorities, that adultery is not meant in the clause of exception;

that it is not necessary to understand that clause in the texts in which it is not expressly inserted, or to limit by the interpolation the general indissolubility of marriage; and that it is more agreeable to the Hellenistic and primitive use of the word; to the occasion, scope, and context of our Lord's discourse with the pharisees; to the other texts which contain the rule without the exception; and to the doctrine of Saint Paul, and his reference to the authority of our Lord; to understand the permissive principle of separation, particularly of the prohibited marriage with aliens, and generally not of a fault subsequent to the marriage, but of an impediment precluding the marriage, and to allow the dissolution of no contract which is not originally invalid. In tracing the Christian doctrine of divorce through several periods, it appears, that before the time of Constantine alien marriages were prohibited and null; the general indissolubility of marriage was maintained; the clause of exception was applied with the most scrupulous moderation, and was gradually perplexed by inadequate versions; and that if the separation of the parties was allowed, they were required to remain in singleness and a condition for reunion; and that adultery was held to be the consequence of marriage after separation, or, in the judgment of the monogamists, of any marriage succeeding the first. In the second period the prohibition of divorce was relaxed under the authority of the emperors and the accommodating compliances of the Church, which nevertheless did not abandon the indissolubility of marriage; and even in the third period that doctrine was retained in the Latin Church. The causes of

divorce, which had been originally multiplied by the emperors, were eventually made to comprehend offences which had not the faintest or remotest reference to matrimonial sin, and which no human ingenuity can deduce from the clause of exception.

The indissolubility of marriage is and ever has been a main principle of the English law, which permits the separation of the parties only for cruelty and adultery, and places the latter cause under various restrictions. The troubled period of the Reformation offers an equivocal argument and example of a more relaxed rule, which was not however brought into full operation before the reign of Charles II. when Parliament first assumed the right of dissolving marriage, and created the bad precedent, which, with the dangerous facility of all laws of divorce, has been carried beyond the original intention, and under which the general law of the country is suspended in favour of individuals, and a practice is introduced, embarrassed with inextricable difficulties, marked by the grossest contradictions and anomalies in its rules and principles, and liable to all the objections of private, partial, and *ex-post-facto* law.

Private acts of separation are in fact privations of conjugal and parental duty, are distinct anomalies in the ordinary practice of divorce, and are contrary to the rule of marriage delivered by our Lord, and to the engagements contracted by the individual. These acts are opposed by the law of England, which in its ancient principles acknowledges no separate maintenance, and in practice allows them to be super-

seded by a suit for the restitution of conjugal rights, and puts on them a construction unfavourable to the husband, binding him to the full measure of his bond, and barring him of the remedy which he seeks under the worst of injuries. The validity which they are occasionally allowed to possess, confessedly rests on precedents, not principles, of law, and they are justified by no necessity, and rejected by the general policy of the law.

The doctrine of marriage, contemplated as a divine institution, has been also contrasted with the practical effects of admitting the merely civil contract of marriage, which has been shewn to produce uncertainty in the obligation, and to facilitate the practice of divorce.

The main principle which it has been attempted to sustain, and the whole argument which has been constructed upon that principle, have been made to rest on the authority of the Scriptures interpreted in conformity with themselves by the collation of text with text, and in correspondence with primitive comments and expositions: and the constant object of the discussion has been to exhibit, in deference to the divine authority, a simple and harmonious doctrine of marriage, adultery, and divorce, and by the removal of exceptions founded in inveterate misapprehension to rescue marriage from the character of a civil contract to the dignity of a divine institution; and, in subservience to the terms of that institution, to uphold its religious ratification, to restrain the impediments which preclude the contract, to enforce the reciprocal obligations which belong to the relation, to insist upon the sinful and criminal character

of adultery, and to sustain the indissoluble perpetuity of the matrimonial union.

In this attempt there are no doubt many errors and deficiencies, which wisdom may correct and candour will excuse; there may have been more boldness in encountering objections than address in removing them; more presumption in exposing the defects of the law than skill in suggesting the proper remedies. But it is hoped, that nothing is asserted in prejudice of moral virtue or religious truth; that the temerity of private opinion, and the revival of obsolete interpretations, have not been pressed beyond the occasion; that no offence has been gratuitously given to individuals; and that in the opposition which has been occasionally offered to great names, there has been no neglect of the deference which is due to the authority of argument. The question which has been debated is a question of vital importance, intimately associated with private happiness and with public virtue; and however the indiscretion or incapacity of the writer may fail to establish the theory which has been proposed, there is a hope that new attention may be drawn to the doctrine and law of marriage, adultery, and divorce, and that better abilities may be engaged in illustration and defence of the holiness, the duty, and the permanence of that relation, which, originating in the divine institution, and ever supported by the divine benediction, has been made, at all times and in all nations, in every age and condition of life, the great means of promoting the knowledge and virtue of individuals, the peace of families, the social affection of kindred, and the civil order of nations, and

which has wonderfully and mysteriously combined the vast and incomprehensible design of the progressive population of the world, with the minutest attention to the consolation of individual infirmity and decrepitude. The mind which can comprehend the good which marriage has effected, and is designed to effect, will acknowledge such beneficence of design as implies a divine Author; and every man who desires to appropriate the blessing to himself, will prove his gratitude by a practical submission to the rules of the divine institution, and ever declare the praise of His goodness, who, when he saw that it was not good that man should be alone, made an help meet for him; ordaining that the man should cleave unto his wife, and seeking in the perpetuity of the union the most efficient method of continuing a godly seed.

APPENDIX.

No. I.

ON THE HELLENISTIC AND ECCLESIASTICAL MEANING OF THE WORD πορνεια.

THE various, the confused, and the unsatisfactory expositions of the word πορνεια, as it occurs Matt. v. 32. xix. 9. Acts xv. 20, 29. seem to demand and to justify a more exact investigation of its meaning and import. It is not probable, that any discovery will be made which has escaped the penetration and research of former commentators; but it is possible, that by comparing the several texts in which the word and some similar expressions are found, and by bringing into one point of view the versions and the commentaries by which those texts have at different times been illustrated and explained, a clear and strong light may be thrown upon the sense in which the Jews understood the term, a sense, which it is of the highest importance to ascertain, because, in the texts in question, the word was used with reference to controversies which were agitated at the time among the Jews.

The principal design of the following dissertation is to shew, 1. that there is a word, or class of words, appropriated to describe adultery ordinarily and properly so called: 2. that the words so appropriated are distinguished from those which denote simple whoredom: 3. that if either of the words be a generic term, including the other, πορνεια is not that generic term: 4. that it is not necessary to admit, that πορνεια is in any text confounded or synonymous with μοιχεια: 5. that the Hellenistic writers do not adhere to the classical sense or etymology of the words, but use πορνευω, εκπορνευω, πορνη, and πορνεια, to denote

generally the *apostacy* of idolatry, and specifically acts of consecration to the service of idols, and also the incestuous and forbidden marriages of the Jew with the Gentile, of the faithful with the unbelieving. In the establishment of these propositions more or less attention will be paid to every text in which the words in question occur, and, without pretending to deny that πορνεια bears the sense of simple fornication, it is meant to shew, that there is no authority for interpreting the word in the sense of adultery, and that, whenever it is restricted by the context to a state of marriage, it is necessary to resort to some more authorized, although less ordinary and familiar, meaning of the word. It will confirm the argument to collect such evidence of the primitive import of the word as is scattered in the relics of the Hellenistic and Christian writers, who flourished before the expiration of the third century.

1. There is a copious class of words appropriated to describe adultery in all its circumstances. The word μοιχεια denotes the state or act of adultery[a]. The word μοιχος denotes the person of the adulterer[b], and μοιχαλις the person of the adulteress[c]. The adjective μοιχαλις denotes the character of a generation practised in adultery, whether real or figurative, actual or spiritual[d]. The verbs μοιχαομαι, μοιχευω, and μοιχευομαι, signify the commission of adultery[e]. There are not less than fifty texts in which the word μοιχος and its derivatives are used to denote adultery properly so called, in all of which the sense is undisputed, and a clear notion is conveyed to the mind of the reader, and many of which are defined and explained

[a] Matt. xv. 19. Mark vii. 21. John viii. 3. Gal. v. 19. Jer. xiii. 27. Hos. ii. 2. iv. 2. [b] Job xxiv. 15. Psalm xlix. 18. Prov. vi. 32. Isa. lvii. 3. Luke xviii. 11. 1 Cor. vi. 9. Heb. xiii. 4. James iv. 4. [c] Ezek. xvi. 38. xxiii. 45. Hos. iii. 1. Mal. iii. 5. Rom. vii. 3. James iv. 4. (2 Pet. ii. 14. the concrete is used for the abstract.) [d] Matt. xii. 39. xvi. 4. Mark viii. 38. [e] Ex. xx. 13. Deut. v. 18. Matt. v. 27. xix. 18. Mark x. 19. Luke xviii. 20. Rom. ii. 22. xiii. 9. Levit. xx. 10. Matt. v. 28, 32. xix. 9. Mark x. 11, 12. Luke xvi. 18. John viii. 4. Jer. iii. 8, 9. v. 7. ix. 2. xxiii. 12. Ezek. xxiii. 43. Hos. vii. 4. Apoc. ii. 22.

by some circumstance more or less distinct in the context. In some of the figurative applications of the prophets, the meaning may be thought equivocal, and it may be difficult to trace the analogy of the metaphor; but in the ordinary use of the word there is no ambiguity; and it is no gratuitous hypothesis, that, if adultery had been intended in our Lord's clause of exception concerning the justifying cause of divorce, Matt. v. 32. xix. 9. the common word μοιχεια would have been used in preference to πορνεια, especially as the verb μοιχαομαι is actually used to designate the effect and consequence of an unjust divorce.

2. The ordinary meaning of μοιχεια is unequivocal and undisputed: it is also in various texts distinguished from πορνεια in such manner, that if the two words be indeed equivalent and synonymous, and do not relate to distinct and separate offences, either term would have been sufficient to express the author's meaning, and the other would have been altogether and most unnecessarily redundant. The evidence of the restriction of πορνεια to simple whoredom, and of its distinction from other offences, is very clear and explicit. Thus παρθενον μη καταμανθανε . . μη δως πορναις την ψυχην σου . . μετα ὑπανδρου γυναικος μη καθου. Syr. ix. 5, 6, 9. Cf. xli. 20, 21. απο ορασεως γυναικος ἑταιρας, απο κατανοησεως γυναικος ὑπανδρου. Again: δυο ειδη πληθυνουσιν ἁμαρτιας και το τριτον επαξει οργην· ψυχη θερμη . . ανθρωπος πορνος . . ανθρωπος παραβαινων απο της κλινης αυτου. xxiii. 16, 18. τιμη γαρ πορνης, ὁση και ἑνος αρτου, γυνη δε ανδρων τιμιας ψυχας αγρευει. Prov. vi. 26. The same distinction is made in the New Testament, in which the apostle declares that God will judge fornicators and adulterers, πορνους δε και μοιχους. Heb. xiii. 4. and that fornicators, idolaters, and adulterers shall be excluded from the kingdom of heaven, 1 Cor. vi. 10. on which Schleusner remarks, that "πορνοι a μοιχοι . . diserte distinguuntur." The same apostle enumerates adultery, fornication, uncleanness, lasciviousness, among the works of the flesh, Gal. v. 19. and it is admitted by Parkhurst, that in this passage πορνεια, or simple forni-

cation, is "distinguished both from μοιχεια, adultery, and ασελγεια, lasciviousness of other kinds, and also from ακαθαρσια, uncleanness." Our Lord makes the same distinction, affirming, that murders, adulteries, fornications, proceed from the heart, Matt. xv. 19. Mark vii. 21. and in this text as is remarked by Schleusner, "πορνειαι a μοιχειαι ita distinguitur, ut illud de scortatione et fornicatione tantum, et aliis impudicitiæ generibus, adulterio tantum excepto, accipiendum sit." In the texts in question our Lord, in describing the consequences of an unlawful divorce, speaks of adultery, μοιχαται, but in the clause of exception he uses the word πορνεια. Is it probable that there should be this variation of the expression, without a corresponding distinction of the sense?

3. If it is admitted that there is a distinction between the words μοιχεια and πορνεια, the nature of the distinction seems to be obvious, that the former denotes the offence of married persons, and the latter that of unmarried persons. But with allusion more or less distinct to the texts in question, commentators ancient and modern, from Origen to Grotius, have contended for a large and almost indefinite signification of the word πορνεια, and suggested that it stands for a class of crimes including μοιχεια as a distinct offence. Thus the author of the Clementina asserts that there are many kinds of πορνεια, πλην πρωτη μοιχεια εστιν, but the earlier and better authority of Clemens Alexandrinus allows πορνειας τρεις τας διαφορας, φιληδονιαν, φιλαργυριαν, ειδωλολατρειαν, Strom. l. vii. s. 12. without any specific mention of adultery. The large sense has nevertheless been admitted into the Lexicons; and Parkhurst, who admits the distinction between πορνεια, and μοιχεια, and ακαθαρσια, says, that the former "may include *all kinds of lewdness:* Rom. i. 29. according to Theophylact on the place: πασαν απλως την ακαθαρσιαν τω της πορνειας ονοματι περιελαβεν. The apostle comprehends absolutely all kind of uncleanness under the name of πορνεια. Compare 1 Cor. vi. 13, 18. (where see Kypke,) vii. 2. 1 Thess. iv. 3, and following

verses." The words of Schleusner, although he also admits the distinction, are equally comprehensive: "Vocabulum hoc latissime patet, et non solum scortationem, fornicationem, stuprum, prostitutionem corporis, vel quæstûs vel libidinis causâ, sed etiam *omnis generis impudicitiam*, quocunque modo se exserat, incestum, adulterium, interdum adeo libidinem procreandi naturalem et omnibus ingeneratam, quatenus ad incestam et illicitam consuetudinem sollicitare homines valet . . . Rom. i. 29. πορνεια impudicitia omnis generis, ubi in duobus codicibus ante πορνεια additum legitur ακαθαρσια, quod merum glossema sapit, nisi πορνεια h. l. de adulterio, præeunte Zonarâ in Can. xix. Basil. cujus verba laudat Wetstenius, N. T. T. ii. p. 27. interpretari aliquis malit." Of this various reading Griesbach takes no notice, and it is certainly not of sufficient authority to justify the meaning imputed to πορνεια in this passage. The principal question is, whether πορνεια is thus comprehensive in its signification, and whether it includes μοιχεια as the specific and subordinate offence. In the texts to which Parkhurst appeals in proof of the large signification of πορνεια, 1 Cor. vi. 13, 18. vii. 2. there is certainly no reference to adultery: and in 1 Thess. iv. 3. the precept is against simple fornication; distinguished from adultery, which is probably implied in the sixth verse; and comprehended together with fornication under the general word ακαθαρσια in the seventh verse. Where this word ακαθαρσια is a genuine reading, and not a *merum glossema*, it is the generic term, as in Gal. v. 19. μοιχεια, πορνεια, ακαθαρσια, where the three words have distinct and separate meanings; μοιχεια, adultery commonly so called, distinct from πορνεια, fornication of whatever kind; and both distinct from ακαθαρσια, impurity in general. See also 2 Cor. xii. 21. where πορνεια and ακαθαρσια occur together, without imposing on πορνεια the sense of adultery, which, if it be necessary, is implied under ακαθαρσια. If πορνεια is a generic term, comprehending the specific offence of μοιχεια, or if it denotes the more aggravated crime, and

therefore includes the simpler offence, it would be reasonable to expect some general prohibition of fornication or πορνεια. But the seventh commandment is not ου πορνευσεις, but ου μοιχευσεις, and this commandment either includes fornication as the subordinate offence, forbidding not only adultery but whoredom also, Lact. Div. Inst. Epit. c. 64. or there is no prohibition of fornication. When this commandment is repeated or alluded to in the New Testament, the prohibition of fornication is implied, not expressed: and in adverting to the pollutions of the heart, in which our Saviour observes the order of the Decalogue, μοιχεια occurs in the first place as the sin forbidden, and πορνεια as a distinct offence occupies the second or subordinate place, "murders, adulteries, fornications." In the clause of exception it was the undoubted purpose of our Saviour to abridge the facilities of divorce, which the Jews had derived from the word uncleanness in the law of Moses: Deut. xxiv. 1. But it is obvious, that if the word πορνεια be of that general sense and signification in which it is interpreted by Grotius and other expositors, the explicit purpose of our Lord is defeated by the ambiguity of his language. His clause of exception, thus largely expounded, cannot be supposed to restrict the licence, which was collected from the Mosaic law. This alone is an insuperable objection to the argument of Selden, that πορνεια in the use of the Pharisees is equivalent to any uncleanness.

4. At the same time it would be disingenuous to conceal that there are texts, in which μοιχεια may be justly conceived to be almost if not altogether confounded with πορνεια. It is the received and undisputed opinion of the commentators, that the prophets, in describing the covenant which God had contracted with his Church under the name of marriage, denote *apostacy* or idolatry, which is the violation of that covenant, under the corresponding name of adultery: and it is in some of these figurative descriptions that the words πορνεια and μοιχεια may seem to

be used promiscuously and without discrimination[f]. This indiscriminate use is confined almost exclusively to the highly poetical parts of the prophetical Scriptures: both terms, if the ordinary sense of πορνεια be insisted upon, are confessedly used in a metaphorical sense; and it is very possible that the true analogy of the figure may have been overlooked and cannot be recovered. It would be worse than tedious repetition to enter upon a minute examination of these texts, before the ground upon which it is intended to maintain the distinction of the terms has been opened. It is admitted, that in the prophetical writings there is a metaphorical application of one or both of the words: but in the clause of exception the words are used without a figure in their plainest and most natural sense.

5. The argument has hitherto proceeded on the common assumption, that the ordinary interpretation of πορνεια is indisputable, and that according to its classical etymology, which suggests the notion of personal prostitution[g], or more properly a passing from one to another[h], (a transfer, or transgression and trespass in the literal meaning of the words,) it means simple fornication between unmarried persons, any commerce of the sexes out of lawful marriage. Without disputing that the words πορνη, πορνος, πορνεια, πορνευω, and εκπορνευω bear this meaning in the use of such Hellenistic writers as had studied in the schools of the heathen[i], and in several passages of the Canonical Scriptures[k], some of which were addressed to converted Gentiles, and would naturally be accommodated to their previous modes of thought and expression, and in which the received exposition affords a very adequate sense and signification, and is not inconsistent with the context; it is

[f] See Isa. lvii. 3. Jer. iii. 2—9. Ezek. xvi. xxiii. Hos. ii. 2—5. Amos vii. 17. Apoc. ii. 20—22. Ecclus. xxiii. 23. [g] την τε γαρ ὡραν εαν μεν τις αργυριῳ πωλῃ τῳ βουλομενῳ, πορνον αυτον αποκαλουσιν. Xen. Mem. Socr. l. i. c. 6.
[h] Th. περαω transeo, a περαν, unde περναω or περνημι vendo: p. m. πεπορνα, unde πορνη, &c. [i] Compare Ecclus. xix. 2. xxiii. 16, 17. xxvi. 9. Also Prov. xxix. 3. [k] Compare Rom. i. 29. Eph. v. 3, 5. Col. iii. 5.

proposed in the prosecution of the argument, to shew that this is not the only or even the principal signification of the words; that πορνεια has no reference to adultery, and that in the ordinary use of the Hellenistic writers it bears a very different sense.

It will not be denied, that πορνεια is very frequently used in the Scriptures to describe the great offence of religious apostacy or idolatry; and it is commonly supposed that the word in this sense is used figuratively. It is of importance to enquire whether it does not signify *apostacy* properly and not figuratively.

Parkhurst, with some diffuseness and prolixity, explains πορνεια of "the communication of Christians in idolatrous worship, which was a violation of the marriage between God or Christ and his Church, and was often accompanied with bodily prostitution. Rev. ii. 21. xiv. 8. xvii. 2, 4. xviii. 3. xix. 2. In this sense it is generally used in the LXX. for the Hebrew זנות though sometimes for bodily fornication or whoredom, as Gen. xxxviii. 24. Hos. i. 2." Πορνευω is "to commit spiritual whoredom against God or Christ, by communication in idolatrous worship, which was frequently accompanied, as 1 Cor. x. 8. (compare Num. xxv. 1, 2. Rev. ii. 14, 20.) with bodily whoredom, occ. Rev. xvii. 2, 3, 9." Πορνη is also explained of "a Christian Church, corrupted by idolatry. occ. Rev. xvii. 1, 5, 15, 16. xix. 2."

The interpretations of Schleusner differ but little from those of Parkhurst. Πορνεια is "metaphorice, idololatria, vel quæcunque falsa doctrina et religio, quâ verus Dei cultus deseritur:" and having explained, or rather approved, the exposition of πορνεια in Acts xv. as accubitus in ειδωλειῳ et esus των ειδωλοθυτων," he refers in confirmation of this exposition to "Apoc. ii. 21. coll. v. 20. ix. 21. coll. v. 20. xiv. 8. xvii. 2, 4. xviii. 3. xix. 2." Under the same word he notices the customary practice of the sacred writers, in using words expressive of whoredom and adultery, to denote the cultivation and practice of idolatry.

"Judges ii. 17. 1 Chron. v. 25. Isa. l. 21. lvii. 3, 4. Jer. iii. 1. Ezek. xxii. 3. Hos. i. 2. iv. 12. Nahum iii. 4." and he assigns as the ground and reason of the metaphor, that the faith in which the Jews stood pledged to God was voided in the same manner by idolatry, as the conjugal oath by adultery: and in the same manner the people of Israel, on account of their intimate union with God, are compared with a wife beloved of God. In the Lexicon on the LXX. he admits the exposition of Bretschneider, and asserts with specific examples the common use of πορνεια in the sense of idolatry. He interprets πορνευω "2. metaphorice; idololatriam sector, deastros colo, cum idololatris ago, et familiaritatem contraho:" (in LXX. after Biel "ad idola deficio:") adding to the texts alleged by Parkhurst, Rev. xviii. 3, 9. 1 Chron. v. 25. Jer. iii. 6. Hos. ix. 1. Ecclus. xlvi. 11. He also explains πορνη, "metaphorice mulier, quæ defecit a vero cultu divino, et ad idololatriam, non solum ipsa deflexit, sed etiam alios allicere conatur," adding to Parkhurst's authorities for a similar exposition, Ezek. xvi. 34. Isa. i. 21. Schoettgen on the same word remarks, "sub formâ meretricis describitur ecclesia falsa, quæ idololatriam et falsam doctrinam docet."

In all these expositions, idolatry forms the principal feature in πορνεια, *metaphorically*, according to Schleusner; *accompanied* with bodily prostitution, according to Parkhurst; *positively*, according to Biel and Bretschneider. It confirms the force of the argument, that Suidas, adopting the exposition of Theodoret and the etymology of Athanasius, explains πορνεια, without any qualification or reserve, of idolatry. "Πορνεια ἡ ειδωλολατρεια· και πορνος ὁ ειδωλολατρης· παρα το ΠΟΡΡΩ ΝΕΥΕΙΝ[1]. εξωλοθρευσας παντα τον πορνευοντα απο σου . . . omnem qui a te *ad idola deficit*." The etymology thus suggested by Athanasius and adopted by Suidas, properly suggests the sense of religious *apostacy*,

[1] Alii volunt, quod πορνεια dicitur δια το πυρουν νεοτητα, quod urat juventutem; vel δια το πηρουν η ὡς εκτυφλουν τον νουν, quod depravat vel occæcat mentem. Outhov. in Bibl. Brem. Cl. iii. p. 439.

the very sense which was expressed by the most ancient translators, which was insinuated by Josephus, and was not unknown to the primitive writers of the Christian Church. It has been at least attempted to shew[m], that the same notion of *apostacy* is involved in the root of the Hebrew word, of which πορνεια is the ordinary translation, and of which sexual intercourse is but a very subordinate and particular signification. "*Of fornications*" is the common title of the Hebrew treatises of *idolatry*[n]: and it is worthy of remark, that the word πορνευω bears this sense in the plainest and most concise narratives of history, and in the briefest rules of the law, where metaphors would hardly be expected, and that it is explained in the parallel passages by αφιστημι and similar words, and may always be translated, without the least injury to the sense, by the word *apostatize*, as it is rendered in the Chaldee paraphrase and the most ancient versions, by words signifying *error* or *deviation*. It might be difficult to shew that the word πορνευω means in any text to *pollute* or *debauch*, a sense which is expressed by other words, and especially by the verb κοιμαομαι, while the verb πορνευω is continually recurring in the sense of idolatrous *apostacy*. Examples of this meaning of the word may now be produced in the order of the texts in which πορνευω or εκπορνευω occurs by itself; in which πορνη occurs either with or without πορνευω; and in which πορνεια occurs either accompanied or not accompanied with πορνευω, πορνη, and other words of the same family.

Exodus xxxiv. 14, 15, 16. Thou shalt worship no other God, for the Lord is a jealous God, lest thou make a

[m] "Jo. Frid. Frisch in Commentatione de muliere peregrinâ apud Hebræos minus honeste habitâ (Lips. 1744.) in radicem זנה inquirit et probari alloborat eam sensu generalissimo significare *recedere, digredi*; specialiori *exire, abire, vagari, extravagari*; specialissimo, *scortari*." Hering. Diss. in Actt. xv. 20, 29. Bibl. Brem. Nov. Cl. iv. p. 313.

[n] See Whitby on John viii. 40. and Buxtorf de Abbrev. Hebr. p. 191. "In Tractatu de Idololatriâ scribitur זונות Scorta.

covenant with the inhabitants of the land, and they go a whoring (*apostatize*, εκπορνευωσιν,) after their gods, and do sacrifice unto their gods, and one call thee, and thou eat of his sacrifice; and thou take of their daughters unto thy sons, and thou give thy daughters unto their sons, and thy daughters go a whoring (*apostatize*, εκπορνευωσιν,) after their gods, and thy sons go a whoring (*apostatize*, εκπορνευωσιν) after their gods.

Targ. Onkelos. *errabunt* post idola sua . . . et *errabunt* filiæ suæ . . . et *errare* facient filios tuos post idola sua.—Targ. Jerusalem. et *errent* post idola eorum . . . et cum *errabunt* filiæ eorum . . . *seducant* etiam filium tuum post idola sua.—Vers. Arab. et *seducantur* in sectando adoranda sua, et *seducantur* filiæ ejus . . . et *seducant* filios tuos etiam.—Vers. Syriac. ne cum *aberraverint* post simulachra sua et *aberrent* filiæ tuæ, . . . *seducant*que filiæ eorum filios tuos.—Vers. Persica. *devii* sint facti . . . et *deviæ* sint factæ filiæ ejus . . . et *devios* facient filios tuos post idola eorum.—From Walton's Polyglot Bible.

The covenant is explained by Patrick of a covenant of marriage, which the Israelites were forbidden by a law coeval with the law of circumcision, and prevailing in all ages, (Biblioth. Biblica,) to contract with the Canaanites, and of which the issue would be idolatrous *apostacy*. When the text is recited 1 Kings xi. 2. the word εκκλινωσι is substituted for εκπορνευωσι, to describe the influence of Solomon's strange wives in *turning him away* from the Lord to idolatry: and when in Deut. vii. 4. the marriage of the Israelites with the Canaanites is forbidden, in the apprehension of leading the Israelites into idolatry, the word αποστησωσι is substituted: Neither shalt thou make marriages with them . . . for they will *turn away*, αποστησει, thy son from following me. In Josh. xxiii. 12. the same effect is described under αποστραφητε. The people are otherwise warned against these unlawful marriages in

Lev. xix. 29. lest the land fall to whoredom (*apostatize*, εκπορνευσει,) and the land become full of wickedness, ανομιας.

Targ. Jer. ne *errent* in scortatione et repleatur terra scortatione.—Pers. neque *devia* fiet terra ut impleatur terra *deviatione*.—Vulg. ne *contaminetur* terra.

The *apostacy* contemplated is equivalent to ανομια, literally a state out of the law and covenant of God°.

Lev. xvii. 7. They shall no more offer their sacrifices unto devils, after whom they have gone a whoring, (*apostatize*, εκπορνευουσιν.)

Targ. Onkelos. post quos ipsi *errant*.—Jerus. post quæ *errarunt*.—Arab. *seducuntur*.—Syr. *aberrant*.—Pers. *devii* facti sunt.

They had been guilty of idolatrous practices, and were commanded to offer only at the tabernacle, that they might be less exposed to the seduction of demons. Patrick.

Numbers xv. 39. It shall be unto you for a fringe, that ye may look upon it, and remember all the commandments of the Lord, and do them; and that ye seek not after your own heart and your own eyes, after which ye used to go a whoring, (*apostatize*, και ου διαστραφησεσθε οπισω των διανοιων υμων και των οφθαλμων, εν οις εκπορνευετε οπισω αυτων.

Targ. Onkelos. post quæ vos *erratis* sequentes ea.—Jerus. neque *declinabitis errando* post cogitationem et visionem, post quæ vos *erratis*.—Arab. post quos vos *seducimini*.—Syr. post quos vos *aberratis*.—Pers. post quæ vos *deviatis*.

The design of these fringes was to promote and confirm the sanctification of the people, and to prevent their apostacy from the Lord. In the LXX the design of these fringes ου διαστραφησεσθε is strongly contrasted with the occasion of them εν οις εκπορνευετε, the inhibition of *perversion* with the actual *apostacy*. Justin M. remarks, that

° Ανομος *gentilis, non Judæus, idololatra*, . . qui non subjectus est τω νομω, legi Mosaicæ, et adjuncta est notio adversarii hujus divinæ legis et Dei. . . . Hesych. Ανομον, το μη υποκειμενον νομω. Bretschneider Lexicon.—1 Cor. ix. 21. ubi Theodoretus ait de Apostolo: ανομους λεγει τους εξω πολιτευομενους του λογου. Sine lege eos vocat, qui extra legem Mosis, ejusque notitiam vitam ducebant. Grabe Spicil. vol. ii. p. 248.

the Deity ordained these phylacteries, δια τουτων δυσωπων ὑμας αει μνημην εχειν του Θεου: ἁμα τε και ελεγχον εν ταις καρδιαις ὑμων, ουδε μικραν μνημην εχετε του θεοσεβειν, και οὐδ' ούτως επεισθητε μη ειδωλολατρειν. Dial. cum Tryphone Jud. s. 46.

Deut. xxii. 21. Then shall they bring out the damsel to the door of her father's house, and the men of her city shall stone her with stones that she die, because she hath wrought folly in Israel, to play the whore in her father's house, (to make her father's house to *apostatize*, ὁτι εποιησεν αφροσυνην εν υἱοις Ισραηλ εκπορνευσαι τον οικον του πατρος αυτης.

Targ. Jerus. quoniam fecit ignominiam in Israel, proferendo famam malam scortationis contra domum patris sui.—Pers. *deviationem* faciendo domi patris sui.

This is not a case of simple fornication, nor of absolute adultery, but of a woman corrupted between the time of her espousals and her husband's completing the marriage. See Patrick. Whatever was the precise offence of the woman, it is said, not that she committed fornication, but ὁτι εποιησεν αφροσυνην, an expression frequently appropriated to offences of this description. The consequence of her offence, according to the LXX, was εκπορνευσαι τον οικον του πατρος αυτης, as the priest's daughter under similar circumstances is said, βεβηλωσαι, to profane the house of her father, and in the active sense in which the word occurs in other places.

Deut. xxxi. 16. This people will rise up and go a whoring (*apostatize*, εκπορνευσει) after the gods of the strangers of the land, and will forsake me, and break my covenant.

Targ. Onk. et *errabit* post idola.—Jerus. *errabunt* post idola.—Arab. *seducetur* et sectabitur deos incolarum regionis.—Syr. *errabit* post deos alienos terræ.—Pers. *deviabit* post deos alienigenæ terræ.

Nothing can be clearer than this *apostacy* after other gods, forsaking the Lord and breaking his covenant. It is

said, with express reference to this prevailing offence of the people, ὁτι απεστρεψαν επι θεους αλλοτριους. ver. 18.

Judges ii. 17.[p] They would not hearken to their judges, but went a whoring (*apostatized*, εξεπορνευσαν) after other gods, and bowed themselves unto them.

Targ. Jerus. *erraverunt* post errores populorum.—Syr. post deos peregrinos *errantes* adoraverunt eos . . . eo quod *aberrassent*, deos alienos adorassent a viâ.

Tertullian c. Gnosticos, s. 3. alludes very distinctly to this history: Instituit super illos Deus Critas . . . sed nec istis obaudire perseveraverunt: ut quis Critarum obierat, illi ad *delinquendum* supra quam patres eorum *abeundo* post deos aliorum.—Atque ita per omnes pene annales Critarum, et deinceps regum, reservatis gentium circumcolarum viribus, bello et captivitate et jugo allophylorum, iram dispensavit Israel, quotiescunque ab illo maxime *in idololatriam exorbitaverunt*.

Judges viii. 27. Gideon made an ephod, and put it in his city, even in Ophrah, and all Israel went thither a whoring (*apostatized*, εξεπορνευσε) after it.

Targ. Jerus. *erraverunt* omnis Israel post id.—Syr. *aberrarunt* illic filii Israel post ipsum.—Arab. *erraverunt* filii Israel post idolum ipsius.

"This, I suppose, was after his death, when the people began to return to idolatry, and had this fancy among others, that God would answer them where this ephod was, as well as at his tabernacle at Shiloh." Patrick.

Judges viii. 33. As soon as Gideon was dead, the children of Israel turned again, and went a whoring (*apostatized*, εξεπορνευσαν) after Baalim, and made Baal-berith their god: and the children of Israel remembered not the Lord their God.

[p] In v. 15. some copies (see Hexapla in loc.) read for εκπορευοντο or εξεπορευοντο, some εξεπορνευσαν, others εκπορνευον, "ubi tamen εκπορνευσαν mihi videtur inepto loco positum esse, referendum nempe ad זנה nisi quis statuere malit, auctorem hujus versionis ratione habitâ, v. 12 et 13. יצא de *actionibus illicitis*, adeoque de idolorum cultu explicandum esse putasse." Schleusner. Lex ad LXX.

Targ. Jerus. *errarunt* post Baghalaija.—Syr. *aberraverunt* post Baal.—Arab. secutiquæ sunt Baal idolum.

"Mutatâ priore religione, cœperunt esse Idololatræ." Vatablus: see also Patrick. It is the very essence of *apostacy* to follow idols, and not remember the Lord God.

Ecclus. xlvi. 11. Concerning the judges, every one by name, who went not a whoring, (did not *apostatize*, ουκ εξεπορνευσαν,) nor departed (ουκ απεστραφησαν) from the Lord, let their memory be blessed.

Syr. quorum cor minime *seductum* fuerit.—Arab. non *aberraverit*.

In this text εξεπορνευσαν and απεστραφησαν are coupled together, and the latter ascertains the meaning of the former. The apostacies under the judges, and in other periods of Jewish history, expressed by εξεπορνευσαν, are in Judith v. 18. described by απεστησαν: "When they departed, απεστησαν, from the way that he appointed them." It will contribute to illustrate and confirm the proposed interpretation of the word, to throw together certain passages of different writers, who have spoken of the conduct of the Israelites under their judges. Josephus affirms, that the Jews of this age were afflicted απο της περι το θειον ολιγωριας. Ant. l. v. c. 3. s. 2. τῳ μη δια τιμης αγειν τον θεον, μηδε τοις νομοις ὑπακουειν. c. 4. s. 1. ὑπο τε του μητε σεβειν τον θεον μηθ' ὑπακουειν τοις νομοις. c. 5. s. 1. μητε αυτοι φρονειν ὑπο της δυστυχιας οντες αγαθοι, και του Θεου πλειον δαμασαι θελοντος αυτων την ὑβριν, και την περι αυτου αγνωμοσυνην, και μεταθεμενοι του λοιπου σωφρονως συνδιδαχθεντες τας συμφορας αυτοις εκ της περιφρονησεως των νομων ὑπαρξαι. s. 2. παντα δε τα των Ἑβραιων εις ακοσμιαν και ὑβριν του Θεου και των νομων ὑπεφερετο. c. 7. s. 7. Clemens Alexandrinus, in relating the transactions of this period, uses the words ἁμαρτων and εξαμαρτων. Strom. l. i. s. 21. The author of the Apostolical Constitutions, l. i. c. 8. in recording the similar offences of a later age, almost identifies εκπορνευω with αποστασιᾳ: ὁσοι δε βασιλεις εξεπορνευσαν απο Θεου, εν αποστασιᾳ αυτων συντομως απωλοντο. The unknown author of the Josephi Hypo-

mnesticon, published by Fabricius, Cod. Pseudepigr. V. T. adverts to the history of this period, and the fulfilment of Joshua's prophecy of the effects of the disobedience of the Jews, and των επιοντων αυτοις δεινων ραθυμια τε απο της ευσεβειας και αποκλισει τη επι δυσσεβειαν . . . ως τα εθνη προτιμησεσθαι αυτων δυσσεβησαντων . . . των επι ταις πολλαις ειδωλολατρειαις παροργισαντων τον Θεον . . . τοις των εθνων ειδωλοις προστεθησονται, οθεν και αυτοι παραλειφθεντες υπο Θεου δαιμοσιν, οισπερ ειλαντο, εκδοθησονται. So God raised up Sisera, κρατουντα του λαου δια το δυσσεβειν. The Madianites also prevailed, δια το επι ταις δυσσεβειαις (τους Ἑβραιους) δια Θεου εκκαταλελειφθαι. Before the time of Jephtha, αμαρτωντι τω λαω και δυσσεβουντι επικρατεις οι πολεμιοι γινονται . . . παλιν δε απο της ευσεβειας αποραθυμησαντι τω λαω, Samson was raised up.

Judges xix. 2. His concubine played the whore against him, (*departed* from him, επορευετο απ' αυτου.)

Targ. Jerus. contempsit.—Syr. scortata.—Arab. fornicata.—MS. Alex. ωργισθη.

Patrick assumes, without hesitation, that she was faithless to his bed. Other commentators have found more difficulty in the passage, and are divided in their opinions. Some assert that the woman committed fornication before the marriage was confirmed, to which others object the peculiarity of the grammatical construction, and the fact of her being his wife, although in an inferior degree. Others interpret it of adultery committed by the woman *against* him, and in violation of her conjugal duty; or *under* him, and while she was residing in his house; or *from* him, by desertion of him. See Bibl. Brem. Cl. iii. p. 438. Biel and Schleusner Lex. in LXX. Others, on the authority of the LXX, translate, *she departed from him.* A doubt is at the same time suggested, whether the word should not be εποργευθη. Grotius remarks, that the Hebrew word which properly signifies *scortari*, may also signify metaphorically *abalienationem animi*, in conformity with the reading of the Alexandrian MS. Patrick adds, that some " will have no more to be meant, but that she was

forward and contumaciously disobedient, so that she could not endure his company, but forsook him. The Chaldee plainly inclines this way, and the LXX translate it ωργισθη αυτω, i. e. according to some copies, but in the received text, επορευθη απ' αυτου. Josephus, αλλοτριως ειχε. But, if εποργευθη is a reading for which there is no authority, has the text any connexion with the main purpose of this enquiry? It is of the very highest importance in shewing that the original word, which the LXX ordinarily render by πορνευω or εκπορνευω, and which Josephus in this passage interprets by αλλοτριως ειχε, may also be translated by πορευομαι απο τινος, which is therefore synonymous with πορνευομαι, and can bear no other sense than *departure*, *alienation*, or *apostacy*. In the tenor of the narrative there is nothing which justifies the imputation of adultery, which the commentators have brought against the woman; no mention is made of the person with whom the adultery was committed, or of any punishment following the adultery, after which the man would hardly have gone after the woman, and spoken to her in a friendly manner, without reproach, and with a desire of bringing her again to his house. The entertainment in the house of her father, and the signal vengeance which followed her subsequent violation, are inconsistent with this supposition. The whole difficulty arises from the restricted sense which the commentators have affixed to the Hebrew word, and to the Greek word by which it is commonly represented, and it is removed by the proposed translation of both words, as terms denoting separation or departure.

1 Chron. v. 25. The chief men of the half tribe of Manasseh transgressed against the God of their fathers, and went a whoring (*apostatized*, εποργευσεν) after the gods of the people of the land.

Arab. *negassent* Deum . . . et coluissent deos gentium terræ.—Syr. et *errassent* post deos gentium terræ.

They neglected the true God; they followed idols: q. d. they *apostatized*. See Joseph. Ant. Jud. l. ix. c. 13. s. 2.

where, in speaking probably of a different period, he says, that many of the tribe of Manasseh πεισθεντες οἱς οἱ προφηται παρηνεσαν εις ευσεβειαν μετεβαλοντο, ceased παρανομουντες, but not πριν η τοις πολεμιοις αυτους αμυνομενος της ασεβειας ὁ θεος εποιησεν ὑποχειριους.

2 Chron. xxi. 11, 12, 13. Jehoram made high places in the mountains of Judah, and caused the inhabitants of Jerusalem to commit fornication, (to *apostatize*, εξεπορνευσε τους κατοικουντας,) and compelled Judah thereto. And there came a writing to him from Elijah the prophet, saying, Thus saith the Lord God of David thy father; Because thou hast not walked in the way of David thy father, nor in the ways of Asa king of Judah, but hast walked in the way of the kings of Israel, and hast made Judah and the inhabitants of Jerusalem to go a whoring, like to the whoredoms of the house of Ahab, (to *apostatize* as the house of Ahab has *apostatized*, εξεπορνευσας τον Ιουδαν ὡς εξεπορνευσεν οικος Αχααβ.

Arab. vinum bibere compulisset electos in æde sacrosanctâ et domum Judæ *dissipasset* . . *seduxeris* Judam . . scortationibus domus Achabi.—Syr. vino potavit Nazaræos Ierosolymorum et *dispersit* Judæos . . *seduxisti* Judam . . scortatione domus Achabi.

The house of Ahab was distinguished by its apostacy and zeal for idolatry; the offence to which Jehoram led the people after that example was idolatrous apostacy, in the commission of which he made high places in the mountains of Judah; and, instead of walking in the ways of Jehosaphat and Asa, who were constant in the worship of the true God, he followed the kings of Israel in their apostacy from that worship. It is the record of Josephus concerning him: ταυτα δε αυτῳ πραττοντι και τελεως εκβεβληκοτι της διανοιας τα πατρια νομιμα, κομιζεται παρ' Ηλιου του προφητου επιστολη, ἡ τον Θεον εδηλου μεγαλην παρ' αυτου ληψομενον δικην, ὁτι των μεν ιδιων πατερων μιμητης ουκ εγενετο, τοις δε των Ισραηλιτων βασιλεων κατηκολουθησεν ασεβημασι, και συνηναγκασε την του Ιουδα φυλην και τους πολιτας Ιεροσολυμων,

αφεντας την οσιαν του επιχωριου Θεου θρησκειαν, σεβειν τα ειδωλα καθως και Αχαβος τους Ισραηλιτας εβιασατο. Ant. Jud. l. ix. c. 5. s. 2. In the Josephi Hypomnesticon he is said not to have been buried in the sepulchre of David, δια το δυσσεβησαι, and it is recorded that Jehoram married the daughter of Ahab and Jezebel, ήτις ταις της Ιεζαβελ δυσσεβειαις τεθραμμενη και τον Ιωραμ επηγαγετο δυσσεβειν. c. 17, 18.

Psalm lxxiii. 27. They that forsake thee shall perish: thou hast destroyed all them that go a whoring (*apostatize*, τους πορνευοντας) from thee.

Chald. qui *aberrarunt*.—Syr. qui *aberrant*.

On the authority of this text, Suidas, without any qualification or reserve, explains πορνεια of idolatry, and πορνος of an idolater. So Origen on the place: ούτος πορνευει απο Θεου, ὁ επιδεδωκως ἑαυτον τῃ των δαιμονων λατρειᾳ. The destruction των πορνευοντων απο Θεου corresponds with the ruin of them that forsake him, and is strongly contrasted with the benefit του προσκολλασθαι τῳ Θεῳ, the *apostacy* with the adherence.

Psalm cvi. 38. They were defiled with their own works, and went a whoring (*apostatized*, επορνευσαν) with their own inventions.

They "committed spiritual whoredom, that is, idolatry:" Ainsworth. In their defilement and their *apostacy* they were equally alienated from the people of God.

Ezek. vi. 9. I am broken with their whorish heart, which hath departed (τῃ εκπορνευουσῃ, MS. Alex. τῃ αποστασῃ) from me, and with their eyes, which go a whoring (*apostatize*) after their idols; and they shall loathe themselves for all the evils which they have committed (και κοψονται προσωπα αυτων) in all their abominations.

Chald. cor eorum insipiens, quod *declinavit* a cultu meo et aspectum oculorum suorum, qui *errarunt*.—Syr. meretricium cor eorum qui *deflexerunt* a me, et oculos qui *aberrarunt*—corda eorum quæ *abalienata* sunt a me. Vers. Hieronym. apud Origen. Hom. in Ezek.

In the different editions of the LXX, εκπορνευουσῃ and

αποστασῃ are used as words of the same signification, both denoting *apostacy* from God and devotion to idols. The abominations are clearly appropriated to idolatry, from which the cutting or beating of the face is not very remote.

Ezek. xx. 30. Are ye polluted after the manner of your fathers, and commit ye whoredom (do ye *apostatize*, εκπορνευετε) after their abominations?

Chald. *erratis*.—Syr. *aberrantes*.

They *apostatized* in offering sacrifice upon the hills, in polluting themselves with idols, and in serving wood and stone, (compare v. 28, 31, 32.) and therefore the Lord threatened to purge out of them τους ασεβεις και τους αφεστηκοτας. v. 38.

Hos. ix. 1. Thou hast gone a whoring (*apostatized*, επορνευσας) from thy God.

Chald. *aberrastis*.—Syr. quod *aberraveris*.—Arab. *aberrasti*.

That idolatrous *apostacy* is meant is plain from the context, especially v. 10. They went unto Baal-Peor, and separated themselves unto that shame, και ησαν οι εβδηλυγμενοι ὡς οι ηγαπημενοι.

Jude 7. Even as Sodom and Gomorrha, and the cities round about them, in like manner giving themselves over unto fornication (*apostatizing*, εκπορνευσασαι,) and going after strange flesh.

Of the ordinary whoredom of Sodom there is no record, and their specific and characteristic vice is designated by another expression. Under the word εκπορνευσασαι the apostle may probably allude to the original character of the Sodomites, who were the first that were charged with being πονηροι και ἁμαρτωλοι εναντιον του Θεου σφοδρα. Gen. xiii. 3. Ainsworth in loc. In their proper signification, and as they are frequently translated, ἁμαρτανω and πορνευω are almost synonymous.

Rev. xvii. 2. With whom the kings of the earth have committed fornication, (*apostatized*, επορνευσαν.)

Rev. xviii. 3. The kings of the earth have committed fornication (*apostatized*, εποργευσαν) with her.

Rev. xviii. 9. Who have committed fornication (*apostatized*, πορνευσαντες.)

It is generally admitted that these expressions are meant to predict the great *apostacy* or *error* of the Christian Church. Saint John uses the phraseology of the ancient prophets: Saint Paul, in reference to the same event, says, Some shall *depart*, αποστησονται, from the faith.

It is not meant that all these texts in which the words πορνευω or εκπορνευω occur are equally forcible, or equally free from exception; but let the reader determine whether *apostacy* is not the chief and prominent character which they bear; and whether, if in the majority of the texts, especially in those in which the words *from God* or *after other gods* are included, *apostacy* was substituted for *fornication*, the sense would not be more clearly and unequivocally expressed. It is a *separation*, not a *connexion*, which the words in their ordinary construction imply. The ecclesiastical exposition and etymology, ΠΟΡϱωΝΕΥΕΙΝ, are most fitly expressed by the word *apostacy*, which is actually used in some of the parallel passages, and is represented in the old translations by *aberration* or *deviation*. The word, with little or no exception, occurs in one uniform sense; there is no change from the proper to the figurative use; nor is there reason to suppose its metaphorical application, certainly not in the prophetical Scriptures, where the figure is carried on by another word, nor in the strict precepts of the ritual, nor in the concise narratives of the history, which are all plain and unadorned. The received and ordinary interpretation can hardly be discerned in the frequent and copious use of the word, and it is expressed in the Jewish Scriptures by very different terms.

The argument in favour of the proposed interpretation of the word πορνευω will be confirmed by shewing, that in the use of the word πορνη, as a derivative word of

cognate signification, the Hellenistic writers recognize what has been called the ecclesiastical etymology, πορρω νευειν, and use it in the sense of an *apostate* or *alien*. Schleusner, in explaining the metaphorical meaning of the word, has exactly described what as it is here contended is its proper sense: *mulier quæ* defecit *a vero cultu divino et ad idololatriam non solum ipsa* deflexit, *sed etiam alios allicere et* seducere *conatur*. Maimonides, according to Meuschen, among other comments upon the original word, introduces Cananæa, seu *non origine Ebræa:* and Danzius affirms, that the Jews understood by זנה, non magis scortum quam *virginem non Israelitidem*. Jo. Frid. Frisch gives a similar exposition, *mulierem peregrinam*, which he defends by an investigation of the Hebrew root. See Hering Diss. in Actt. xv. 20. This *apostacy* or *alienation* was of that kind which the apostle imputes generally to the Gentiles, when he calls them aliens from the commonwealth of Israel, and strangers from the covenant of promise. Some few examples of this use of the word πορνη may now be given, and other texts may be reserved in proof of a similar but more refined and complicated meaning of the word.

It is remarked by Hering, (Diss. in Actt. xv. see also Poole's Synops. in Prov. ii. 16.) "In Proverbiorum libro nihil est frequentius, quam ut זנה, נכריה, זרה inter se misceantur, atque unum pro altero ponatur." The best proof of this assertion will be the exhibition of some of the texts in different versions, in collation with the context.

Prov. v. 3. The lips of a strange woman drop as a honey-comb.

Chald. Syr. *extraneæ*.—Aquila, Symmachus, Theodotion. αλλοτριας.—LXX. πορνης, q. d. an *alien*.

Prov. vi. 26. By means of a whorish woman, πορνης, a man is brought to a piece of bread.

By comparison with v. 24. in the order of the parallelism, the πορνη is identified with the αλλοτρια of the LXX. and the ξενη of Sym. Theodot.

Prov. vii. 10. A woman with the attire of an harlot.

The versions are agreed in representing her meretricious character; the Arabic only denoting *speciem ementitam*: but the same woman in v. 5. is called γυνη αλλοτρια και πονηρα.

Prov. xxiii. 21. The drunkard and the glutton, πορνοκοπος, shall come to poverty.

Chald. vorax.—Syr. intemperans in carne.—Arab. adhærens sordibus luxuriæ.—Aq. Sym. The. συμβολοκοπος.

Prov. xxiii. 27. A whore is a deep ditch.

Heb. Chald. Syr. meretrix.—Sym. πορνη.—Arab. domus *aliena*.—LXX. αλλοτριος οικος.

In the context the whore is compared with the strange woman, and the two are confounded in the versions.

Judges xvi. 1. Then went Samson to Gaza, and saw there an harlot, (an *alien* woman, γυναικα πορνην,) and went in unto her.

Chald. mulierem *tabernariam*.

The context, especially compared with the subsequent history of Delilah, does not require the ordinary sense of πορνη, which is sufficiently represented in the Chaldee.

Isaiah i. 21. How is the faithful city become an harlot. an *alien*, πορνη.)

Chaldee *oberrans*. See Outhov. in Bibl. Brem.

The word is translated an idolatress by Schleusner: and in this sense the *apostacy* of the city is strongly contrasted with its ancient fidelity. The language of passionate exclamation hardly admits of metaphor and ornament. Origen, alluding to the text, seems to recognize the Hellenistic use of the words, remarking that our Lord, forsaking the Jewish synagogue as an adulteress, ὡς μοιχαλιδα, departed from her, και ελαβε γυναικα πορνειας τους απο των εθνων· επει εκεινοι μεν οντες πολις πιστη Σιων, γεγονασι πορνοι· ούτοι δε, ὡς ἡ Ρααβ ἡ πορνη τους του Ιησου κατασκοπους ὑποδεξαμενη διεσωθη πανοικι· μετα τουτο μηκετι πορνευουσα κ. τ. λ. Comm. in Matt. tom. xii. s. 4.

Isaiah xxiii. 15, 16, 17. Tyre shall be forgotten seventy

years, according to the days of one king: after the end of seventy years shall Tyre sing as an harlot, (as an *alien's* song, ὡς ασμα πορνης.) Take a harp; go about the city, thou harlot, (*alien*,) that hast been forgotten, (πολις πορνη επιλελησμενη,) make sweet melody, sing many songs, that thou mayest be remembered. And it shall come to pass after the end of seventy years, that the Lord will visit Tyre, and she shall turn to her hire, and commit fornication with all the kingdoms of the world upon the face of the earth, (και παλιν αποπαταστησεται εις το αρχαιον, και εσται εμποριον πασαις ταις βασιλειαις της οικουμενης επι προσωπον της γης.)

Heb. et fornicabitur cum omnibus regnis.—Chald. canticum meretricis . . . quasi meretrix . . . et erit sufficiens negotiatio ejus omnibus regnis.—Syr. cantilenam meretricis . . . et fornicetur in omnibus regnis.—Arab. carmen meretricis . . . urbs scortatrix . . . fiet emporium omnibus regnis.

Πορνη πολις επιλελησμενη is a very proper description of an alien city, destitute of aid in the time of her affliction, at the expiration of which it was foretold that she should sing the ασμα πορνης. If the ασμα πορνης be equivalent to the ωδη πορνικη of the Apostolical Constitutions, it is no more than the ωδη εθνικη, or sacrificial hymn of the heathens. It is in the following hymn, or ασμα πορνης, which is supposed to be sung by Tyre, that she calls herself πολις πορνη επιλελησμενη, and it is certainly more natural that she should triumph in the compassion shewn to her abject condition, than in the remembrance of her debauchery. As the Greek version as well as the Chaldee and Arabic passes over the fornication expressed in the Hebrew and Syriac, all attempt to explain its meaning might be omitted in this place; it may however be suggested, whether in a very general sense of separation and departure it may not be meant that Tyre, in her restored, converted, and renovated state, shall be separated and depart from her former idolatry, and deal in the truth in such a spirit, that her merchandise of

it shall be holiness to the Lord. This is at least the purport of the prophecy. See Poole's Synops. in v. 17, 18. Outhov. in Bibl. Brem. reconciles the LXX. with the Hebrew, quia contextus docet hic respici ad mercaturam spiritualem, seu metaphoricam, quâ Tyrus ut meretrix comta alliceret populos.

Isaiah lvii. 3. Draw near hither, ye sons of the sorceress, the seed of the adulterer and the whore, (of adulterers and an *alien*, μοιχων και πορνης.)

Chald. de plantatione enim sanctâ est plantatio eorum, sed ipsi sunt adulteri et fornicantes.—Syr. semen adulterum et fornicarium.—Arab. adulterorum et scortatricis.

In this text, μοιχων, the adulterers, seems to represent the members of the Jewish Church severally considered, who, having as it were contracted themselves in marriage to God, were guilty of adultery in holding communication with idolaters. Πορνη (as in i. 21.) represents the Jewish Church collectively, the fornicaria et peccatrix Jerusalem, as she is called by Origen; and it is in her corporate capacity that she is addressed, v. 6—13. and reproved for her "whorish idolatry," with direct reference either to her original state of *alienation*, or to her actual *apostacy* and abandonment to all the excesses of idolatry. The issue of this connexion are called children of transgression, a seed of falsehood, υιοι ανομοι, σπερμα ανομον, literally an issue not of the law, which was the exact condition of the children of a Jewish father by an alien woman, as the Jewish Church is here called, and which was the declared effect of idolatrous apostacy, now exhibited in calling upon idols, παραλουντες ειδωλα, in the immolation of children, and in offering libations and sacrifices to polished stones, in contravention of the ancient prescription of the law. It cannot be denied that *apostacy* is signified under μοιχων και πορνης: the only question is whether πορνης is used in a figurative or a proper sense. If adultery, properly so called, had been intended, and that sense is reflected from μοιχων upon πορνης, no reason can be assigned why μοιχαλιδος is not used

in connexion with μοιχων, as in James iv. 4. why both nouns are not used in the same number, or why πορνης, which never occurs in the sense of an adulteress, should be coupled with μοιχων, which always denotes adulterers. There is no difficulty if πορνης be understood of an *alien*, and μοιχων figuratively of adulterers, nor any violation of the prophetical idiom, in which nothing is more common than to couple figurative adultery with positive apostacy.

Jeremiah v. 7, 8. Thy children have forsaken me, and sworn by them that are no gods: when I had fed them to the full, they then committed adultery, εμοιχωντο, and assembled themselves by troops in the harlots' houses, (the houses of *aliens*, πορνων,) they were as fed horses, (ιπποι θηλυμανεις,) every one neighed after his neighbour's wife.

If μοιχαομαι and πορνων are here used in their ordinary sense, it will not be denied that μοιχαομαι is distinct from πορνη. Μοιχαομαι and χρεμετισμος describe the act and design of adultery, and the dwelling εν οικοις πορνων, and the condition of ιπποι θηλυμανεις, the passion for women. If, however, as is more agreeable to the context, πορνων is used in the Hellenistic sense, and μοιχαομαι is applied metaphorically, the course of offence will be, the forsaking of God, and the adjuration by idols or no gods; spiritual adultery, and the consequent connexion of whatever kind with *aliens*; difficulty of restraint, as of ιπποι θηλυμανεις, in the contemplation of adultery, whether against man or against God. Whatever be the exact meaning of the several terms, the cause of reproof was, that the house of Israel and the house of Judah had dealt very treacherously against the Lord; they had belied the Lord.

Matt. xxi. 31, 32. The publicans and harlots (the *alien* women, αι πορναι) go into the kingdom of heaven before you: for John came unto you in the way of righteousness, and ye believed him not; but the publicans and harlots (the *alien* women, αι πορναι) believed him.

In depreciating the merit of the publicans, our Saviour uses the popular phraseology of the Jews, which was ac-

commodated to the prevailing prejudice against their office, their foreign extraction, and their religious apostacy, in respect of which they denominated them sinners, and coupled them with sinners in that common sense of the word in which it is synonymous with Gentiles. Hering Diss. in Actt. xv. It would be vain to seek in the brief history of the Baptist any particular exposition of this allusion of our Lord: but there are two passages in the Gospels, which in the expositions of primitive commentators throw considerable light on the text. In speaking of the love which looks for a secular requital, our Lord, according to Saint Matthew v. 46, 47. asks, Do not even the publicans so? according to Saint Luke vi. 33. he affirms that sinners do the same: but when his words are recited by Justin M. (Apol. i. s. 15.) his reading or exposition is οἱ πορνοι τουτο ποιουσιν. A more particular illustration is found in the case of the woman whom Saint Luke (vii. 37, 39.) and Simon the Pharisee agree in calling a sinner: but Origen, in alluding to the passage, calls her πορνη, and treats her as a representative of the call of the aliens: ἡμεις δε οἱ απο των εθνων, οἱ παντων ασεβεστεροι γεγενημενοι, εφ' οἱς και λεγεται το επι τῃ πορνῃ εκεινῃ τῃ μετανοουσῃ. Hom. in Jer. xv. s. 5.

Luke xv. 30. Thy son which hath devoured thy living with harlots, (*aliens*, πορνων.)

The younger son represented the Gentile world, living before his repentance in all the abominations of the heathen, in a far country, wasting his substance in riotous living, μετα πορνων, with persons who both locally and in religious profession, as well as in moral habits, were aliens and apostates. So Tertullian, De Pud. s. 9. describes him as one longe evagatus a patre, *ethnice* vivens; and he contends against a misapplication of the parable, under which jam non mœchi et fornicarii sed idololatræ et blasphemi et negatores et omne *apostatarum* genus, hâc parabolâ patri satisfacient: and he pronounces the prodigal son, and such as rely upon his case, *apostates*. Clemens Alexandrinus,

also, in an elegant allusion to this pathetic history, seems to give the same turn to μετα πορνων. Ὁποση χορεια και πανηγυρις εν ουρανῳ γινεται, ει τις εξοριος γεγονε και φυγας της ὑπο τῳ πατρι πολιτειας, αγνοων ὡς οἱ μακρυνοντες ἑαυτους απ' αυτου, απολουνται· ει την δοσιν και την κτησιν και την κληρονομιαν την πατρωαν ανηλωσεν· ει τινος εξελιπεν ἡ πιστις και ἡ ελπις δεδαπανηται τοις εθνεσιν συντρεχοντος εις την αυτην της ασωτιας αναχυσιν· ειτα λειμωττων και στερουμενος, κ. τ. λ. Fragm. apud Macarii Chrysoceph. Hom.

Rev. xvii. 1. The judgment of the great whore, (*apostate*, πορνης.)

Ver. 5. Babylon the great, the mother of harlots, (*apostates*, πορνων.)

Ver. 15. Where the whore (the *apostate*, πορνη) sitteth.

Ver. 16. These shall hate the whore, (the *apostate*, πορνην.)

It is admitted that these expressions are used of "a Christian Church corrupted by idolatry," i. e. of an *apostate* Church.

If πορνη signifies an *alien* and *apostate*, and πορνευω to *alienate* or *apostatize*, πορνεια signifies the act or state of *alienation* or *apostacy;* and the texts in which this word occurs by itself, or in conjunction with πορνη or πορνευω, may complete the evidence and proof of the sense which it is here attempted to establish.

Numbers xiv. 33. Your children shall wander in the wilderness forty years, and shall bear your whoredoms, (*apostacy*, πορνειαν.)

Targ. Onkelos. *iniquitates.*—Targ. Jerus. pœnam *peccatorum* vestrorum.—Samarit. fornicationes (in marg. turpitudines.)—Arab. *errorem.*—Pers. *deviationes.*

The offence which provoked this judgment was the offence not of debauchery, but of rebellion and *apostacy*, especially of desiring to return into Egypt, instead of proceeding to the promised land; and the reason for which Caleb was especially exempted, was, that he had followed the Lord fully. In the next verses these apostacies are

called ἁμαρτιαι, and among them is reckoned the offence of the molten calf, in respect of which Moses himself declares in the name of the Lord, Thy people have *corrupted* themselves; they have quickly *turned aside out of the way* which I commanded them; they have made themselves a molten image: Deut. ix. 12. where Ainsworth remarks, that the "word corrupteth meaneth the corruption of God's service and religion."

2 Kings ix. 22. The whoredoms (*apostacies*, αἱ πορνειαι) of thy mother Jezebel, and her witchcrafts.

Arab. Quæ pax cum *idolis* Jezabelis matris tuæ?

Jezebel was distinguished by *apostacy* and a cruel zeal for idolatry; but nothing is recorded which can justify the inference of her being an harlot. Witchcraft is a common accompaniment of idolatry. It is remarkable, that the only occasion upon which Josephus uses the word πορνη, is in reference to Jezebel: he ordinarily paraphrases the πορνευω of the LXX by words denoting *defection*, and describes whoredom by very different terms.

Isa. xlvii. 10. Thy wisdom and thy knowledge hath perverted thee: ἡ πορνεια σου σοι αισχυνη.

Schleusner (Lex. in LXX.) remarks: "רעה scientia. Fallor, an προνοια legendum sit." The alteration is unnecessary: the *aversion* or *perversion* implied in the original is quite consistent with the πορνεια or *apostacy* of Babylon.

Isa. lvii. 7, 8, 9. Upon a lofty and high mountain thou hast set thy bed; even thither wentest thou up to offer sacrifice; behind the doors and the posts hast thou set up thy remembrance; for thou hast discovered thyself to another than me: thou hast enlarged thy bed, and made thee a covenant with them; thou lovedst their bed where thou sawest it: (ωου, ὁτι εαν απ' εμου ΑΠΟΣΤΗΣ, πλεον τι εξεις; ηγαπησας τους κοιμωμενους μετα σου:) and thou wentest to the king with ointment, (hast multiplied thy *apostacy* with them, επληθυνας την πορνειαν σου μεθ' αυτων,) and didst increase thy perfumes, (hast multiplied them that were far from thee, πολλους εποιησας τους μακραν απο σου,) and

didst send thy messengers afar off, and didst debase thyself even to hell.

Aquila. επληθυνας τας συνθεσεις σου.—Sym. τα μυρεψια σου.—Th. τους μυρεψους σου.

The lofty mountain was the temple in which idolatrous sacrifice was offered; the bed was part of the furniture prepared for the guests at an idolatrous feast; the remembrance which was set up was any object of idolatrous worship. The remembrance was set up in secret that it might not be seen, and the bed was enlarged for the admission of strangers, with whom the Jews now entered into covenant, expecting some new advantage from this *apostacy*, (εαν απ' εμου ΑΠΟΣΤΗΣ, πλεον τι εξεις.) It is in this sense that the Jewish Church, before denominated πορνη, is said to have loved them that lay with her, and to have multiplied her *apostacy*, or idolatry. Πορνεια here means *apostacy* properly: the metaphor is carried on by the word κοιμωμενους, here substituted for the more common word μοιχωμενους, unless it be judged preferable to interpret that word also of lying down at the idolatrous feasts.

Jer. ii. 20, 21. For of old time I have broken thy yoke and burst thy bonds; and thou saidst, I will not transgress, when upon every high hill and under every green tree thou wanderedst, playing the harlot (*in apostacy*, εκει διαχυθησομαι εν τη πορνειᾳ μου.) Yet I had planted thee a noble vine, wholly a right seed: how then art thou turned into the degenerate plant of a strange vine unto me? πως εστραφης εις πικριαν ἡ αμπελος ἡ αλλοτρια;

Chald. tu colebas *idola*.—Syr. tu *errabunda* scortaris.

The circumstances of the high hill and the green tree, the common scenes of idolatrous worship, appropriate the sense of *apostacy* to πορνεια, which corresponds with her degeneracy from the condition of a noble vine, a wholly right seed, into the state of a strange or foreign vine. Ἡ αλλοτρια, the epithet of the vine, is a perfect synonyme of ἡ πορνη, the *alien* or *apostate*, who had been polluted and gone after Baalim. v. 23.

Jer. iii. 1, 2, 3. If a man put away his wife, and she go from him, and become another man's, shall he (she) return to her (him) again? Shall not that land (wife, γυνη) be greatly polluted? But thou hast played the harlot with many lovers, (hast *apostatized* under many shepherds, εξεπορνευσας εν ποιμεσι πολλοις.) Yet return (και ανεκαμπτες) to me, saith the Lord. Lift up thine eyes to the high places, and see where thou hast not been lien with: (εξεφυρθης:) thou hast set for them as an Arabian in the wilderness, and hast polluted thy land with thy whoredoms (*apostacies*, πορνειαις) and thy wickedness, and thou hast a whore's forehead, (the face of an *alien*,) and thou refusedst to be ashamed, (οψις πορνης εγενετο σοι, απηναισχυντησας προς παντας.)

Chald. tu fornicata es et adjunxisti te populis multis . . et ream fecisti terram in *idolis* tuis . . impudentiam quasi mulieris meretricis.

The comparison is drawn between the wise provision of the Jewish law, which, to prevent the debasement of the woman, prohibited the husband from reassuming the wife whom he had divorced, and the merciful forbearance of the Lord in accepting the frequent return and repentance of the Jewish Church, after she had separated herself by apostacy. As adultery was not an allowed occasion of divorce, it is not necessary to suppose, that πορνεια was in that sense the ground of the divorce. The contrast between εξεπορνευσας, interpreted of idolatrous *apostacy*, and ανεκαμπτες, of the *return* or repentance of the people, is very strong; and the fact of this *apostacy* under the judges is recorded in history in the very word used by the prophet. In the second verse, the word εξεφυρθης is used metaphorically, in contrast with the plainer statement, that the land was polluted with the πορνειαις, or *apostacies*, and wickedness of the Jewish Church, which in this state of *alienation* bore the οψις πορνης, an expression very similar to the ειδος πορνικον, appropriated by Solomon to the *strange* or *foreign* woman, the common emblem in the prophetic Scriptures of an *alien* and *apostate* Church.

Jer. iii. 6, 7, 8, 9. The Lord said also unto me in the days of Josiah the king, Hast thou not seen that which backsliding Israel hath done? She is gone up upon every high mountain, and under every green tree, and there hath played the harlot, (*apostatized*, επορνευσε.) And I said, after she had done (had *apostatized in*, μετα το πορνευσαι[q] αυτην) all these things, Turn thou unto me. But she returned not: and her treacherous sister Judah saw it, (ειδε την ασυνθεσιαν αυτης ἡ ασυνθετος (q. d. ἡ μη τηρησασα τας συνθηκας του Θεου, Origen.) Ιουδα.) And I saw, when for all the causes whereby backsliding Israel had committed adultery, I had put her away, and given her a bill of divorce; yet her treacherous sister feared not, but went and played the harlot also, (and she also *apostatized*, επορνευσε και αυτη.) And it came to pass through the lightness of her whoredom, (*apostacy*, εγενετο εις ουθεν ἡ πορνεια αυτης,) and she committed adultery with stones and with stocks.—και εθυμιασαν τη Βααλ is added by Clem. Alex. in reciting the passage: Pæd. l. i. c. 9.

Chald. colunt lignea *idola* . . . fecerunt, (Vulg. Syr. fecisset) . . . *erraverunt* etiam ipsi . . . levia videbantur in oculis ejus *idola* ejus.

The text contains no more than the common difference between μοιχεια, which is figuratively, and πορνεια, which is properly, apostacy; nor is it necessary to suppose, that μοιχαομαι and πορνευω are equivalent and synonymous terms. This interpretation is not required by the allusion to the bill of divorce, of which adultery was by connivance only an occasion, and which is here intended to denote only the effects of the figurative adultery. If πορνευω is to be understood in its classical sense of *whoredom*, in a reflected sense of *adultery*, and in a figurative sense of *idolatry*, the confusion will be such as it will require no ordinary subtlety

q "Spohnius pro πορνευσαι ex conjecturâ scribit ποιησαι. Mihi sensum expressisse videntur. עשה scelus, flagitiumque committere quandoque speciatim notat, ac v. 6. ei scortatio, h. e. idolorum cultus tribuitur." Schleusner in LXX.

to develope and explain. But the high mountain and the green tree restrict the sense of πορνεια to the *apostacy* of the Church, which is afterwards blamed for not returning, (ουκ επεστραφη,) is invited to return (επιστραφηθι) with acknowledgment of its iniquity (αδικιαν) because it had transgressed (ησεβησας) against the Lord, and scattered its ways to the strangers under every green tree, and had not obeyed the Lord, and is finally exhorted in unequivocal terms to return from its *apostacy*, επιστραφητε υἱοι ΑΦΕΣΤΗΚΟΤΕΣ. The evidence which the context thus collated affords to the meaning of the word πορνεια is confirmed by the striking parallel, 2 Kings xvii. in which it is recorded of the children of Israel, that they had sinned against the Lord, and had served other gods; had walked in the statutes of the heathen, and had set them up images on every high hill and under every green tree; had wrought wicked things to provoke the Lord to anger, and had served idols; who had been invited to return, rejected the commandments of the Lord, and worshipped all the host of heaven, and served Baal. Therefore the Lord was very angry with Israel, and removed them out of his sight: there was none left but the tribe of Judah only. Also Judah kept not the commandments of the Lord, but walked in the statutes of Israel. Origen, in introducing the history of this prophecy, describes the *apostacies* of the people as ἁμαρτιαι, πταισματα, παραπτωματα: and he conceives that under the words μετα το πορνευσαι, which he retains from the LXX, is implied an admonition to such Christians as are liable to the imputation of being οἱ ἁμαρτανοντες και μη τηρουντες τας συνθηκας του Θεου. Hom. iv. in Jer. s. 1, 5. In a comment upon the same words, he remarks, that the prophet aggravates the charge against Judah: ὁτι μηδε ταις του Ισραηλ συμφοραις επαιδευθη· το δε των ειδωλολατρουντων αναισθητον εμφαινων, ξυλα και λιθους καλει τα ειδωλα, σκοπησας τους εν αυτοις ἐμφωλευοντας δαιμονας. Select. in Jer. The continuation of his comment in respect of the word πορνεια is ambiguous, as he confuses the πορνεια of the prophet with the Jewish.

or rather with the Christian, law of divorce, for it had no connexion with the former.

Jer. xiii. 27. I have seen thine adulteries and thy neighings, and the lewdness of thy whoredoms, (the alienation of thy apostacy, ἡ απαλλοτριωσις της πορνειας σου,) and thine abominations on the hills in the fields.

Chald. consilium peccatorum adolescentiæ tuæ.

As in a parallel text the offence is more distinctly marked by adulteries and neighings: πορνεια and the abominations on the hills are combined with the same design and effect, and bear the same relation to each other, as μοιχεια and χρεμετισμος. Abominations, βδελυγματα, especially committed on the hills, are common acts and accompaniments of the apostacy denoted by πορνεια, of which the effect was, according to the LXX, an απαλλοτριωσις, an estrangement or *alienation*, otherwise called ανομια, or exclusion from the law and covenant.

Ezek. xvi. 15—20, 22—26, 28—41, 43. But thou didst trust in thine own beauty, and didst play the harlot, (*apostatize*, εποργευσας,) because of thy renown, and pourcdst out thy fornications (*apostacy*, πορνειαν) on every one that passed by; his it was: (Chald. fornicata es ob nomen tuum, atque adjunxisti te ut *coleres idola* cum omni transeunte quod non decebat te ita facere:) and of thy garments thou didst take and deckedst thy high places, (didst make sown or spotted images to thyself, εποιησας σεαυτῃ ειδωλα ῥαπτα. Sym. ῥαντα. Th. εμβολισματα,) and playedst the harlot (didst apostatize, εξεπορνευσας) thereupon: the like things shall not come, neither shall it be so Thou hast also taken thy fair jewels of my gold and my silver, which I had given thee, and madest thyself images of men, (εικονας αρσενικας,) and didst commit whoredom (*apostatize*, εξεπορνευσας) with them; and tookest thy broidered garments and coveredst them; and thou hast set mine oil and mine incense before them. My meat also which I gave thee, fine flour, and oil, and honey, wherewith I fed thee, thou hast set it before thee for a sweet

savour; and thus it was, saith the Lord God. Moreover, thou hast taken thy sons and thy daughters, whom thou hast borne unto me, and these hast thou sacrificed unto them. And in all thine abominations and thy whoredoms (*apostacy*, πορνειαν. Chald. omnium peccatorum abominationum tuarum et *idolorum* tuorum) thou hast not remembered the days of thy youth, and wast naked and bare, and wast polluted in thy blood. And it came to pass after all thy wickedness (woe, woe unto thee! saith the Lord God) that thou hast also built an eminent place, (an idolatrous house, οικημα πορνικον. Aq. βοθυνον. Chald. aras. Syr. ædem amplissimam,) and hast made thee an high place (εκθεμα) in every street; thou hast built thy high place (idol temples, τα πορνεια σου, *templa idolis in excelsis extructa:* Schleusner) at every head of the way, and hast made thy beauty to be abhorred, and hast opened thy feet[r] to every one that passed by, and multiplied thy whoredoms, (*apostacy*, την πορνειαν σου. Chald. omnia *idola* tua.) Thou hast also committed fornication with the Egyptians, (hast made to *apostatize*, or apostatized with, the sons of Egypt, εξεπορνευσας τους υἱους Αιγυπτου,) . . . and hast increased thy whoredoms, (*apostacies*, πολλακως εξεπορνευσας. Chald. multiplicasti *idola* tua.) . . . Thou hast played the whore also with the Assyrians, (hast *apostatized* with the daughters of Assur, εξεπορνευσας επι θυγατερας Ασσουρ.) . . . Thou doest all these things, the works of an imperious whorish woman, (of an alien woman, and hast *apostatized* in three ways among thy daughters, γυναικος πορνης και εξεπορνευσας τρισσως εν ταις θυγατρασι σου.) In that thou buildest thine eminent place (*idol temple*, το πορνειον. Chald. aras. Syr. templa. Arab. cauponam) in the head of every way, and hast not been as an harlot, (*alien*,) in that thou scornest hire: (και εγενου ὡς πορνη συναγουσα μισθωματα:)

[r] Την κινησιν του νου ηνιξατο δια του σκιλους, ἐν ᾧ εκινηθη εις πασαν παροδον· παροδος δε λεγεται το μη οδευον κατα την αληθειαν· ἡ γαρ αληθεια εἰπεν, ὁτι εγω ειμι ἡ ὁδος· παν ουν το εξ εναντιας νοουμενον παροδος λεγεται. Orig. Select. in Ezek.

but as a wife which taketh strangers instead of her husband, (παρα του ανδρος μισθωματα.) They give gifts to all whores: (thou hast given gifts to all that make her to apostatize, πασι τοις εκπορνευσασιν αυτην προσεδιδου μισθωματα:) but thou givest thy gifts to all thy lovers, and hirest them, that they may come to thee on every side for thy whoredom: (*apostacy*, πορνειαν:) and the contrary (διεστραμμενον) is in thee from other women in thy whoredom, (*apostacy*, πορνειαν,) whereas none followeth thee to commit whoredoms, (*apostacy*, και μετα σου πεπορνευκασιν. Sym. και μετα σου ουκ εσται πορνεια,) and in that thou givest a reward, and no reward is given unto thee; wherefore thou art contrary, (εγενετο εν σοι διεστραμμενα.) Wherefore, O harlot, (*alien*, πορνη. Chald. tu, cujus opera sunt sicut meretricis,) hear the word of the Lord. Thus saith the Lord God, Because thy filthiness was poured out, and thy nakedness discovered through thy whoredom (*apostacy*, πορνειαν) with thy lovers, and with all the idols of thine abominations, (εις παντα τα ενθυμηματα των ανομιων σου,) and by the blood of thy children which thou didst give unto them; Behold, therefore, I will gather all thy lovers with whom thou hast taken pleasure, (hast been mingled, επεμιγης,) and all them that thou hast loved, with all them that thou hast hated: I will even gather them round about against thee, and will discover thy nakedness (κακιας) unto them, that they may see all thy nakedness, (αισχυνην.) And I will judge thee as women that break wedlock (εκδικησει μοιχαλιδος) and shed blood are judged, and I will give thee blood in fury and jealousy: and I will also give thee into their hand, and they shall throw down thine eminent place, (*idol temple*, πορνειον,) and shall break down thine high places, (βασιν,) they shall strip thee also of thy fair jewels, and leave thee naked and bare. They shall also bring up a company against thee, and they shall stone thee with stones, and thrust thee through with their swords: and they shall burn thy houses with fire, and execute judgments upon thee in the sight of many women: and I will cause thee to

cease from playing the harlot, (will turn thee away from thine *apostacy*, αποστρεψω σε εκ πορνειας. Chald. ut desinas esse velut meretrix,) and thou also shalt give no hire any more. So will I make my fury toward thee to rest, and my jealousy shall depart from me, and I will be quiet, and I will be no more angry; because thou hast not remembered the days of thy youth, but hast fretted me in all these things. Behold, therefore, I also will recompence thy way upon thy head, saith the Lord God, and thou shalt not commit this lewdness above all thine abominations, (και ούτως εποιησας την ασεβειαν επι πασαις ταις ανομιαις σου.)

This passage might be used as a praxis upon the several senses which the Hellenistic writers attach to the word πορνεια, and although it would be folly to deny that parts of the general description may seem to justify the ordinary interpretation, and to identify πορνη with μοιχαλις, it is nevertheless contended, that a more minute examination of the prophet's language will rather confirm than invalidate the proposed exposition of πορνη in the sense primarily of an *alien* or *apostate*. The declared purpose of this solemn expostulation is to "cause Jerusalem to know her abominations," (ανομιας,) and with this view she is cursorily and at length reminded of her *foreign* origin and nativity; she is described as a foundling and a *foreigner*, whom the Lord had cherished and contracted to himself; as one, who having had occasion to boast that she was quasi proxima Deo et civitas ejus, quia peccavit, a Spiritu sancto arguitur, ut *degener* et *extranea*. Orig. Hom. vi. in Ezech. It is agreeable to these allusions that she is called properly a γυνη πορνη in the sense which has been repeatedly explained and insisted upon. A principal character of these alien or foreign women was their idolatrous *apostacy;* and this idolatrous *apostacy* is strongly appropriated in the peculiar translation of the eminent or high places of idolatrous worship by πορνειον, (v. 16, 34, 28.) and of the high places in which she committed idolatry, by εποιησας

ειδωλα ῥαπτα και εξεπορνευσας επ' αυτα, translations which involve the consistency of the LXX with itself and with the original, unless πορνειον be understood of a temple or altar of idolatrous apostacy, or of the dwellings of the consecrated πορναι, in a sense which will hereafter be explained. In the process of the description, the circumstances of the πορνεια or *apostacy* are very distinctly detailed: it consisted of taking the jewels of the Lord, and making images of men, and *apostatizing* (εκπορνευσαι) with them; in setting the oil and incense of the Lord, his meat and fine flour, oil and honey, before them, εις οσμην ευωδιας, and in offering their sons and daughters for a sacrifice unto them. Such abominations were proper acts of idolatrous *apostacy:* but it exceeds the boldness of oriental imagery, nor is it possible to conceive any metaphorical analogy or propriety, under which these abominations can be expressed by the name of *whoredom*. It is not less difficult to conceive what is the nature of that *whoredom*, which Jerusalem, as a πορνη, (if that word be interpreted in its classical sense,) could commit with the images of men, (εικονας αρσενικας) with idols, spotted, coloured, or sewn together, with the sons of Egypt, with the daughters of Assyria, and, according to the gloss of the LXX, with her own daughters, with all of whom it is very conceivable that she should *apostatize*, and record of history that she did *apostatize*. The daughters of the Philistines are said, according to the LXX, not to have been ashamed of her lewd way, but εκκλινουσας σε εξ οδου, ἡς ησεβησας, and this method of expressing a prevailing temptation to *apostacy* by εκκλινειν, as a synonyme of εκπορνευειν, has been observed before. The expressions from v. 26—30. are all of the same description, although they may all be appropriated to a distinct species of πορνεια, reserved for future consideration. In that part of the extract which seems to describe Jerusalem more expressly as a πορνη in the ordinary sense, besides the intricacy of the passage, may be remarked, that she is said to be διεστραμμενη, ordinarily inter-

preted of religious *obliquity* and perverseness, and the resemblance is introduced by the conjunction ὡς, and with the illustrative addition ὡς πορνη συναγουσα μισθωματα, but in the application she is called, as in Isa. i. 25. πορνη, *alien*, or *apostate*, without any sign of comparison. It is in reference to her heathen origin and actual *apostacy*, that she is called πορνη in the Hellenistic sense, and in respect of her intimate communion with the heathen, she is said to be mingled with them, (επεμιγης,) but if it had been intended to denote her conjugal infidelity, it is hardly possible that she should never have been addressed by the name of μοιχαλις. In the conclusion it is indeed written, that she shall be judged with the judgment of an adulteress, (μοιχαλιδος,) but that judgment is introduced by a comparison, and is coupled with the judgment of a murderess, and there is no allusion to the adultery in any other part of the description. In the end of the chapter, Jerusalem is compared with Sodom and Gomorrha, cities eminent for their apostacy, and is reckoned among them that are guilty of spurning or thrusting away, απωσαμενοι, their husbands and their children, a fit emblem of *alienation*. Throughout the description the offences of Jerusalem are called abominations, ανομιαι, idols of abominations, ενθυμηματα των ανομιων, and ασεβεια επι πασαις ταις ανομιαις, all terms appropriated to idolatrous *apostacy*[s], which, notwithstanding its admitted difficulties, appears to be the principal and predominant sense of πορνεια throughout the chapter.

Ezek. xxiii. 2—5, 7—9, 11—14, 16—19, 22, 27, 29, 30, 35, 43—49. There were two sisters, the daughters of one mother, and they committed whoredoms, (*apostatized*;

[s] Ασεβια, *aversio*, is Deut. xix. 16. the translation of the same word סרה, which in Deut. xiii. 5. is rendered by πλανησις, *apostasia*, and Isa. i. 5. by ανομια, or, according to Theodotion, by αποστασια. So Origen, Select. in Ezech. c. iii. ανομιαν φησας επι τη ασεβεια και τη των ειδωλων θεραπεια. Theodotion renders ανομια, in xvi. 58. by *fornicatio*. So plainly does πορνεια correspond with ανομια and ασεβεια.

εξεπορνευσαν) in Egypt: they committed whoredom (Chald. *erraverunt* in Egypto: post cultum *idolorum* suorum *erraverunt*) in their youth: there were their breasts pressed, and there they bruised the teats of their virginity (εκει διε παρθενευσαν.) And the names of them were Aholah the elder, and Aholibah her sister: thus were their names; Samaria is Aholah, and Jerusalem Aholibah. And Aholah played the harlot when she was mine, (*apostatized* from me, εξεπορνευσεν απ' εμου. Chald. *erravit* a cultu meo:) and she doated on her lovers, on the Assyrians her neighbours. . . . Thus she committed her whoredoms (*apostacy*, πορνειαν. Chald. elegit *errare*,) with all them that were the chosen men of Assyria, and with all on whom she doated; with all their idols she defiled herself: neither left she her whoredoms (*apostacy*, πορνειαν. Chald. *cultum idolorum*,) brought from Egypt in her youth . . they lay (εκοιμωντο) with her, and they bruised the breasts of her virginity, (διεπαρθενευσαν αυτην,) and poured their whoredom (*apostacy*, πορνειαν, Chald. *idola* sua) upon her. Wherefore I have delivered her into the hand of her lovers, into the hands of the Assyrians, upon whom she doated. These discovered her nakedness, . . . and slew her with the sword. . . . And when her sister Aholibah saw this, she was more corrupt in her inordinate love than she, and in her whoredoms (*apostacy*, πορνειαν,) more than her sister in her whoredoms, (*apostacy*, πορνειαν.) She doated upon the Assyrians her neighbours, . . . Then I saw that she was defiled, (μεμιανται,) that they both took one way, and that she increased her whoredoms; (*apostacy*, πορνειαν. Chald. *errores* suos,) for when she saw men pourtrayed upon the walls, the images of the Chaldeans pourtrayed with vermilion, . . . she doated upon them, and sent messengers unto them into Chaldea: and the Babylonians came to her into the bed of love, and they defiled her with their whoredom, (her *apostacy*, πορνειαν αυτης. Chald. in *idolis* suis,) and she was polluted with them, and her mind was alienated (απεστη) from them. So she discovered her whoredom, (*apostacy*, πορνειαν. Chald. *confusio*

ejus,) and discovered her nakedness. (αισχυνην.) Then my mind was alienated from her, (απεστη,) like as my mind was alienated (απεστη) from her sister: yet she multiplied her whoredoms, (*apostacy*, πορνειαν. Chald. *idola* sua,) in calling to remembrance the days of her youth, wherein she had played the harlot (*apostatized*, επορνευσας,) in the land of Egypt. . . . Therefore, O Aholibah, thus saith the Lord God: Behold, I will raise up thy lovers against thee, from whom thy mind is alienated, (απεστη,) and I will bring them against thee on every side. . . . Thus will I make thy lewdness to cease from thee, and thy whoredom (turn from thee thine impieties and thine *apostacy*, αποστρεψω τας ασεβειας σου εκ σου και την πορνειαν σου. Chald. *cultum idolorum* tuorum,) brought from the land of Egypt; so that thou shalt not lift up thine eyes unto them, nor remember Egypt any more. . . . The nakedness of thy whoredoms (*apostacy*, αισχυνη πορνειας,) shall be discovered, both thy lewdness and thy whoredoms, (*apostacy*.) I will do these things unto thee, because thou hast gone a whoring (*apostatized*) after the heathen, (ασεβεια σου και ἡ πορνεια σου εποιησε σοι ταυτα εν τῳ εκπορνευσαι σε οπισω εθνων,) and because thou art polluted with their idols. . . . Because thou hast forgotten me, and cast me (απερριψας) behind thy back, therefore bear thou thy lewdness, (ασεβειαν,) and thy whoredoms, *apostacy*, πορνειαν. Chald. *idolorum* tuorum.) . . . Then said I unto her that was old in adulteries, Will they now commit whoredoms (*apostatize*) with her, and she with them? (ουκ εν τουτοις μοιχευουσι, και εργα πορνης. Chald. *idola* sua. και αυτη εξεπορνευσεν.) Yet they went in unto her, as they go unto a woman that playeth the harlot, (a foreign woman, ὁν τροπον εισπορευονται προς γυναικα πορνην. Chald. ad mulierem hospitatricem:) so they went in unto Aholah and Aholibah, the lewd women, (του ποιησαι ανομιαν.) And the righteous men, they shall judge them after the manner of adulteresses, (μοιχαλιδος,) and after the manner of women that shed blood; for they are adulteresses (μοιχαλιδες) and blood is in their hands. For thus saith the Lord God; I

will bring up a company upon them, and will give them to be removed and spoiled: and the company shall stone them with stones, and dispatch them with their swords; they shall slay their sons and their daughters, and burn up their houses with fire. Thus will I cause lewdness to cease (αποστρεψω ασεβειαν) out of the land, that all women may be taught not to do after your lewdness, (ασεβειαν,) and they shall recompense your lewdness (ασεβειαν) upon you, and ye shall bear the sins of your idols; (τας ἁμαρτιας των ενθυμηματων,) and ye shall know that I am the Lord your God.

This is another passage in which πορνεια may seem to be used in the ordinary sense, and to be convertible with μοιχεια, but in which, upon a more severe examination, it will be found rather to denote idolatry properly and without a metaphor, which is carried on by other terms. The metaphorical terms used for idolatry are, διεπαρθενευσαν, εμοιχωντο, μοιχευουσι, and perhaps also αισχυνη and αισχυνη πορνειας, although in the last expression there is probably a combination of the proper and metaphorical terms. The beginning of the idolatries of Israel and Judah is traced to Egypt, the prolific parent of pagan superstition; and to Assyria, not less distinguished for the early and constant practice of idolatry. The apostacy of Aholah or Samaria is too obvious to need remark: it was established by the erection of an *apostate* and idolatrous altar; it is expressly called an apostacy *from* the Lord, (απ' εμου,) and in reference to the Assyrians it was denominated a defilement with their idols, εν πασι τοις ενθυμημασιν αυτων εμιαινετο.

The excesses of Jerusalem or Aholibah are also called a defilement or pollution, (μεμιανται,) inflamed or excited by pictures of the Chaldeans painted on the walls, and by this defilement her mind was alienated, (απεστη,) the very word which is used to express the judicial alienation of the Lord from Israel and from Judah, and which in that relation cannot admit the idea of any sensual pollution. In pronouncing judgment upon her, the Lord threatens to bring

to an end, not her lewdness and her whoredom, as it is expressed in the authorized version, but τας ασεβειας σου και την πορνειαν σου, of which the former explains the latter, and restricts the sense to an impious apostacy. The vindication of this righteous judgment is, according to the LXX, that this impious apostacy was the occasion of it: ασεβεια σου και ἡ πορνεια σου εποιησε σοι ταυτα, εν τῳ εκπορνευσαι σε οπισω εθνων, because she had forsaken the Lord to follow the Gentiles, and had been corrupted with their idols. Therefore, namely, because she had forgotten the Lord, and cast him from her, απερριψας, she bore the burthen; of what? of her lewdness and whoredom? no; but of her impious apostacy, ασεβειαν σου και πορνειαν σου. This judgment is followed (v. 36—42.) by a more detailed description in plain and figurative terms of her offence, which is called ανομια in the strict sense of that word, and is shewn to consist in adultery with idols, in the initiation of children by fire, in the pollution of the sanctuary and the sabbath, in the sacrifice of children to idols, and in the hypocrisy of approaching the true altar in the midst of these abominations. These are all circumstances appropriate to the notion of idolatrous *apostacy*, and irreconcileable with that of simple whoredom. There follows an allegorical description of the idolatress, among whose offences it is, as in other passages, particularly specified, that her table was furnished with the incense and oil of the Lord. The question is then put: ουκ εν τουτοις μοιχευουσι; και εργα πορνης και αυτη εξεπορνευσε; In this question the εργα πορνης may be understood, most consistently with the language of the LXX. and of the Chaldee version, of the worship of an idolatrous or *apostate* Church, of them that communicate with which it is said, that they μοιχευουσι, an expression common to the prophets in connexion with πορνεια, and that they approach her, ὁν τροπον εισπορευονται προς γυναικα πορνην. The γυνη πορνη, as the phrase is used in Proverbs, both in her extraction and her habits, is not unworthy to represent an *apostate* Church: and it may be permitted to

remark, that the comparison is introduced cautiously, ὁν τροπον, and that the phrase, εισπορευεσθαι προς γυναικα πορνην, is very different from εκπορνευειν απο κυριου, and may denote no more than partaking of the common fare "mulieris tabernariæ aut hospitatricis." Compare Jud. xvi. 1. and the Chaldee on both texts. The effect of this free communication was that which is again and again ascribed to idolatry, του ποιησαι ανομιαν, at least according to the LXX, although in the authorized version, Samaria and Jerusalem are called lewd women. The judgment which was finally denounced upon them, and which righteous men should execute, is the judgment of adulteresses, μοιχαλιδος: and if πορνεια had been intended to represent properly adultery, and figuratively idolatry, there would have been no occasion for this change of the expression. With this punishment the Lord threatens to abolish not ασελγειαν, or the more equivocal offence πορνειαν, but ασεβειαν, (αποστρεψω ασεβειαν,) for an example to others not to follow ασεβειαν, and that they themselves might bear the punishment of impiety and sins of idolatry, ασεβειαν και τας ἁμαρτιας των ενθυμηματων, and might know who is the Lord.

In this passage then other terms besides πορνεια are used figuratively to denote the circumstances of the great *apostacy* of Samaria and Jerusalem; and in immediate apposition with πορνεια, and with the plainest and most unadorned reference to idolatry, are other words entirely distinct from sensual pollution. If πορνεια is interpreted properly of *apostacy*, there is perfect consistency and analogy in the description: if it is used only in a metaphorical sense, there is irretrievable anomaly and confusion. If it be objected, that the interpretation contended for depends principally on the LXX, it is obvious to reply, that it is that version only which can ascertain the sense of πορνεια, and that the Chaldee agrees with that version in denouncing the worship of idols as equivalent to πορνεια.

Ezek. xliii. 7, 8, 9. Son of man, the place of my throne,

and the place of the soles of my feet, where I dwell in the midst of the children of Israel for ever, and my holy name shall the house of Israel no more defile, neither they nor their kings, by their whoredom, (*apostacy*, πορνεια,) nor by the carcases of their kings in their high places. In their setting of their thresholds by my threshold, and their posts by my posts, and the wall between me and them, they have defiled my holy name by their abominations (ανομιαις) that they have committed; wherefore I have consumed them in mine anger. Now let them put away their whoredom (*apostacy*, πορνειαν) and the carcases of their kings far from me, and I will dwell in the midst of them for ever.

Chald. *idola* sua . . . in *idolis* suis.

The offence was, that the name of God had been defiled by abominations, ανομιαις: the commandment was, that it should no more be defiled by *apostacy*, πορνεια: and thus ανομια and πορνεια are coupled in their common sense of a *departure* from the law. The commentators say, "Non polluent, scil. *idololatriis:* Judæi enim post reditum a Babylone non amplius coluerunt *idola*. Poli Synops. in v. 7.

Hos. v. 3, 4. I know Ephraim, and Israel is not hid from me; for now, O Ephraim, thou committest whoredom, (*apostacy*, εξεπορνευσε,) and Israel is defiled: (εμιανθη:) they will not frame their doings to turn unto God; for the spirit of whoredom (*apostacy*, πορνειας) is in the midst of them, and they have not known the Lord.

Chald. *erraverunt* viri domus Ephraim . . spiritus *erroris.*

It will not be denied, that the *apostacy* of Ephraim is the same with the *defilement* of Israel; and it is afterwards said to be the *iniquity* of both that they had dealt treacherously with the Lord, or forsaken him, εγκατελιπον, i. e. they had apostatized. This *apostacy* is ascribed to the spirit of *apostacy* or *error*, πορνειας, which "is not ill expressed in the MS. Arabic translation out of the Hebrew: A firm or obstinate purpose of error, (or whoredom, or idolatry, as the general word is applicable to either, as the like word

in the Chaldee:)" and this spirit terminated in a voluntary ignorance of God, in "wilfully putting from them the remembrance of him, and obstinately refusing to walk in his ways." Pocock in loc.

Hos. vi. 10. I have seen an horrible thing in the house of Israel: there is the whoredom (*apostacy*, πορνειαν) of Ephraim, Israel is defiled.

Chald. *aberraverunt* viri domus Israel.

"Sententia est: In domo regiâ, quæ est penes tribum Ephraim, viget idololatria, et illo exemplo omnes decem tribus ad idololatriam adducuntur." It has been supposed that the prophet alludes to Jeroboam, who was of the tribe of Ephraim, and with whom the idolatry of Israel originated. Poole's Synops.

Nahum iii. 3, 4. They stumble upon the corpses, because of the multitude of the whoredoms (*apostacy*, πορνειας) of the well-favoured harlot, (*alien*, πορνη,) the mistress of witchcrafts, that selleth nations through her whoredom, (*apostacy*, πορνειαν,) and families through her witchcrafts.

Chald. præ multitudinem strepitûs civitatis, quæ est sicut meretrix et scortum . . . ut prodat gentes *idolis* suis.

The multitude of whoredoms is explained by Grotius and Drusius: "Vel 1. cultuum idololatricorum . . . vel 2. artium, quibus usa finitimis persuadebat optime coli numen ritu suo." Witchcrafts are also frequently mentioned in conjunction with other acts of idolatrous *apostacy*, and Nineveh, in respect of her heathenish alienation from God, is described in terms afterwards appropriated to the great *apostate*, the mystical Babylon of the Apocalypse.

Ecclus. xxiii. 22, 23. Thus shall it go also with the wife that leaveth her husband, and bringeth in an heir by another. For, first, she hath disobeyed the law of the Most High; and, secondly, she hath trespassed against her own husband; and, thirdly, she hath played the whore in adultery, (hath committed adultery in her separation, εμοιχευθη εν πορνεια,) and brought in children by another man.

Arab. quod fraudem scortumque committat.

This is the only text to which Parkhurst refers, besides Matt. v. 32. xix. 9. in justification of the exposition of πορνεια in the sense of "whoredom in a married woman." It is however obvious, that the words involve some distinction: εμοιχευθη in itself is of too plain import to require any explanation: the addition of πορνεια in the sense of adultery rather perplexes than illustrates the meaning, and to commit adultery by adultery is but mere tautology, and if it had been intended to aggravate the offence by redundance of expression, the phrase would have been εμοιχευθη μοιχειᾳ. But if the word be interpreted in the Hellenistic sense of *separation* or *alienation*, it will correspond with the expression in ver. 22. καταλιπουσα τον ανδρα. The aggravations of her offence of leaving her husband will be; 1. that she breaks the divine law; 2. that she offends her husband; 3. that she commits adultery, εν πορνειᾳ, while she is separated and bears children by another man. It is in this sense, and in words nearly similar, that Origen speaks of the separation of the Jewish Church, which was not divorced by Christ, but departed of herself, επορνευσεν εκεινη ἡ γυνη, μοιχευθεισα ὑπο του πονηρου: and if any doubt remains of the meaning of this πορνεια of the Jewish Church, it is removed by the additional remark, εκεινη ουν ἑαυτην ΑΠΕΣΤΗΣΕ, μαλλον η ὁ ανηρ αυτην απεστειλεν απολυσας, διοπερ ονειδιζων αυτῃ ΑΠΟΣΤΑΣΗ αυτου, κ. τ. λ. Comm. in Matth. tom. xiv. s. 17.

Rev. ix. 20, 21. And the rest of the men that were not killed by these plagues, yet repented not of the works of their hands, that they should not worship devils, nor idols of gold, and silver, and brass, and stone, and of wood, which neither see, nor hear, nor walk; neither repented they of their murders, nor their sorceries, nor of their fornication, (*apostacy*, πορνειας,) nor of their thefts.

Is it reasonable to fasten a figurative sense upon πορνεια, when all the other offences are plainly expressed, and in

their unadorned sense appropriate acts of idolatrous apostacy?

Rev. xiv. 8. Babylon is fallen, is fallen, that great city, because she made all nations drink of the wine of the wrath of her fornication, (*apostacy*, πορνειας.)

Arab. ob vinum suæ necis. Cf. 2 Chron. xxi. 11. with the Arab. Syr. and LXX.

Rev. xvii. 1—5. I will shew unto thee the judgment of the great whore (*apostate*, πορνης) that sitteth upon many waters, with whom the kings of the earth have committed fornication, (*apostatized*, επορνευσαν,) and the inhabitants of the earth have been made drunk with the wine of her fornication, (*apostacy*, πορνειας. See 2 Chron. xxi. 11, &c.) So he carried me away in the spirit into the wilderness; and I saw a woman sit upon a scarlet-coloured beast, full of names of blasphemy, having seven heads and ten horns: and the woman was arrayed in purple and scarlet colour, and decked with gold, and precious stones, and pearls, having a golden cup in her hand full of abominations and filthiness of her fornication, (*apostacy*, πορνειας,) and upon her forehead was a name written; Mystery, Babylon the great, the mother of harlots, (the *apostates*, των πορνων,) and abominations of the earth.

Rev. xviii. 3. All nations have drunk of the wine of the wrath of her fornication, (*apostacy*, πορνειας,) and the kings of the earth have committed fornication (*apostatized*, επορνευσαν) with her.

Syr. de vino excandescentiæ ejus.

Rev. xix. 2. True and righteous are his judgments, for he hath judged the great whore, (*apostate*, την πορνην,) which did corrupt the earth with her fornication, (*apostacy*, πορνειᾳ.)

The same apostacy which Saint Paul describes under the verb αφιστημι, and the noun αποστασις, is expressed by Saint John by the words πορνευω and πορνεια. This is no inconsiderable proof that these words are synonymous, and that *apostacy* is the true meaning of πορνεια. It is gene-

rally admitted that the word denotes apostacy in a figurative manner; and it is for the reader to determine between the ordinary interpretation and that which is now proposed, and to judge whether the supposition of a metaphor is not altogether gratuitous and unnecessary. There is no imputation of moral lasciviousness on the πορνη of the Apocalypse; her πορνεια, like the apostacy foretold by Saint Paul, consisted in the worship of devils and of idols; it was accompanied, as other cases of idolatry, with witchcraft; the cup of her that made nations drunk with the wine of her πορνεια was full, not of lasciviousness, but of idolatrous abominations; she was the mother of the apostates, and with her apostacy she corrupted the earth. It is not pretended that the mystical Babylon originated any new description of debauchery, and all the interpretations of the Apocalyptic πορνη are agreed in supposing it to foretell a power not so much of moral licentiousness as of religious *apostacy* and *alienation* from the genuine purity of the Gospel.

Let now the evidence in favour of the proposed interpretation of πορνεια in the sense of *idolatrous apostacy* be brought together. However clear or undisputed be the sense of the word in the use of the classical writers, even the received etymon involves the notion of a *transgression*, or *passing over* from one to another, and all the words are of rare occurrence. The sense appropriated to πορνεια, and more especially to πορνη and πορνος, in classical Greek is expressed by other words by the Hellenistic writers. There is also another etymology of the word πορνευω of highly venerable authority, with which the use of the LXX strictly coincides, and which is indicative of *apostacy*. This and the kindred words, with very few doubtful expressions, denote an *apostacy;* their general construction is such as implies not a *communication with*, but an *alienation from*, a person; they are coupled with other words, directly relating to religious *apostacy*, such as ανομια, ασεβεια, and βδελυγματα, and having no allusion or refer-

ence to the ordinary meaning of πορνεια, and they are occasionally explained by other words substituted for them, and having an undoubted reference to *apostacy*, as αφιστημι and εκκλινω. The word πορνειον is used to denote the high place of idolatry, and πορνη in the Book of Proverbs is almost convertible with αλλοτρια. If these words are used in a figurative sense, it is extraordinary that that figurative sense should be perpetually in use; that the traces of the proper sense should be faint and indistinct, and of the rarest occurrence; that the figurative sense should be found in passages of the history and the ritual, where a metaphor could hardly be expected; that the word in a figurative sense should be combined with other words in their plain sense, as πορνεια and ασεβεια, πορνεια and βδελυγματα, and that in the florid passages of the prophets other words, such as μοιχαομαι, κοιμαομαι, διαπαρθενευομαι, should be introduced and predominate. It is not presumed, that the proposed exposition has been established beyond controversy or exception; but the difficulties of the texts which appear most irreconcileable with this interpretation are by no means insuperable; and in many texts, without this exposition, the supposition of a metaphor is so indispensable as almost to justify without other evidence the exposition of πορνεια in the proper sense of *apostacy*. This exposition has the advantage of agreeing with the etymology of the Hebrew word; with the ordinary use of the Jews in entitling their treatises of idolatry treatises of πορνεια, and with the Chaldee paraphrase and the most ancient versions, which translate the words in the sense of *error*, *deviation*, *aberration*, and *worship of idols*, and in many of the texts it is confirmed by the indirect allusions or positive comments of Hellenistic and Christian writers.

But can this exposition be shewn to coincide with the texts in question, without which the whole discussion is at least irrelevant? It is admitted, that it affords no direct advantage in the interpretation of Acts xv. 20, 29. because

as the other acts forbidden are of a particular kind, it is reasonable to suppose, that whatever is interdicted under the word πορνεια is some specific offence, distinct from a general apostacy. The texts Matt. v. 32. xix. 9. might receive an adequate illustration in the present state of the argument, and it might be shewn, that a γυνη επι πορνειᾳ, a wife in a state of *apostacy*, or subject, λογῳ πορνειας, to a charge of *apostacy*, is equivalent to a γυνη πορνειας=γυνη πορνη=γυνη αλλοτρια, and thus the object which it is proposed to attain by a more elaborate investigation, and the exhibition of a more refined meaning of the word, might be anticipated, and the clause of exception in our Lord's prohibition of divorce might be applied to the case of a woman married to the faithful from among the unbelieving. This inference might also be applied in illustration of Acts xv. 20, 29. But it is desirable to confirm the general meaning of the word by alleging instances of its particular use, 1. in respect of the initiatory rites of the heathen religion; and, 2. in respect of the intermarriage of the heathens with the Jews, and to prove that the words πορνευω, εκπορνευω, πορνη, and πορνεια, not only convey a general notion, but express specific acts of *apostacy and alienation* from God.

As the representatives principally of the Hebrew word קדש, and occasionally of זנה, the words in question are appropriated to the rites of prostitution which prevailed in the idolatrous temples. The original word, according to Buxtorf, signifies, *Parari*, *præparari*, *destinari ad aliquid generaliter; in specie*, *sacrari*, *consecrari*, *sanctificari*, *sanctum*, *sacrum esse vel fieri*. Parkhurst, Heb. Lex. under קדש, affirms, that its ideal meaning is, "to separate or set apart from its common and ordinary, to some higher, use or purpose; and thence he derives its subordinate sense, "to set apart, separate or appropriate to sacred or religious purposes, to sanctify, consecrate, . . . to consecrate in an idolatrous manner, or to idolatrous purposes." He explains the sense of the derivative nouns to be "a prosti-

tute male or female," such as among the Canaanites and apostate Jews were consecrated to Venus, and practised their abominable impurities as acts of religion. "The learned Doctor Spencer (De Leg. Heb. l. ii. c. 22, 23.) has shewn, that among the ancient pagan idolaters there were *males* as well as *females* consecrated to their deities, who *prostituted* themselves on the sacred festivals, and were thought by so doing to yield them acceptable service, and that they *were wont to dedicate the gains of their prostitution to their gods and goddesses*. . . . . And from Gen. xxxviii. 21, 22. comp. ver. 15. it appears that a similar consecration, or rather desecration, was in practice among the Canaanites as early as the days of Judah, and no doubt had gained ground among them before the Israelites came out of Egypt: hence one reason of the law, Deut. xxiii. 18." The law thus adverted to demands the first attention.

Deut. xxiii. 17, (18,) 18. There shall be no whore (πορνη) of the daughters of Israel, nor a Sodomite (πορνευων) of the sons of Israel. (The LXX adds, ουκ εσται τελεσφορος απο θυγατερων Ισραηλ, και ουκ εσται τελισκομενος απο υιων Ισραηλ.) Thou shalt not bring the hire of a whore, (πορνης,) nor the price of a dog, (κυνος,) into the house of the Lord thy God for any vow; for even both these are abominations to the Lord thy God.

Targ. Onkelos. Non erit mulier de filiabus Israel *uxor viro servo*, neque *accipiet* vir de filiis Israel *uxorem ancillam*. Non afferes mercedem meretricis.—Targ. Jerus. Non *profanabitis* filias vestras, ut sint meretrices, neque *prophanabit* vir filius Israel seipsum per scortationem. Non inferatis mercedem meretricis.—Arab. Et ne sit ex filiabus Israel scortum, neque ex filiis Israel scortator. Et ne introducas quicquam ex salariis meretricis.—Aq. ενδιηλλαγμενη.

The Hebrew word is "Kedesah, which ordinarily signifieth holiness, but is used here for the contrary; or it was some filthy religious order among the heathens, among whom such abomination was practised under pretence of

religion. And in the apostacy of Israel houses of these profane persons were contiguous to the house of the Lord." Ainsworth. Thus the original words, ordinarily denoting holiness, or a dedication to holy uses, are used in the most opposite sense, to signify the vilest profanation, not only of an apostacy from true holiness and religion, but the consecration of a priesthood by personal prostitution, and the words πορνη and πορνευων as the representatives of the Hebrew original, are ascertained to denote idolatrous initiation, as in Hos. iv. 14. 1 Reg. xxii. 47. See Spencer de Leg. Hebr. Diss. in Actt. xv. 20. c. iii. s. 4. The words which are added by the LXX are supposed by Grotius to be taken from another version, in which קרש is explained sensu initiationis idololatricæ. Theodoret explains τελεσφορον τον μυσταγωγουντα· τελισκομενον δε τον μυσταγωγουμενον. Biel interprets τελεσφορος, "prostibulum seu fœmina gentium sacris vel dæmonum mysteriis fornicatione initiata;" and he translates the latter part of the clause, "non erit initiatus impuris gentium sacris aliquis ex filiis Israel." Thus again the gloss of the LXX corresponds with and confirms the sense of the original; and although in ver 18. πορνη is the translation not of קדש, but of זנח, still, if the words be placed in the order of parallelism which prevails in the writings of the Jews, there will be found in the several verses a correspondence of terms which almost defines the sense:

Ουκ εσται πορνη απο θυγατερων Ισραηλ,
και ουκ εσται πορνευων απο υἱων Ισραηλ·
ουκ εσται τελεσφορος απο θυγατερων Ισραηλ,
και ουκ εσται τελισκομενος απο υἱων Ισραηλ·
ου προσοισεις μισθωμα πορνης
ουδε αλλαγμα κυνος.

The first verses forbid the profanation of the holy seed; the last prohibits the appropriation of the wages of pollution in either sex, as an offering to the Lord, after the manner of the heathen, and denounces it, whether from the

πορνη or the κυων, as an abomination. By this interpretation of κυων in the sense of a consecrated *meritorius*, there is a correspondence in the whole passage; "ut v. 17. cum meretrice cinædus, ita v. 18. cum scorto canis conjungitur." Allusion is made to these Sodomites, as they are called in the authorized version, in other passages of Scripture, in which πορνευων is not used: 1 Kings xiv. 24. they are called, probably by a different reading of the original, (see Biel,) συνδεσμους: 1 Kings xv. 12. αι τελεται: 2 Kings xxiii. 7. by the LXX, καδησιμ: by Aquila, ενδιηλλαγμενοι: by Symmachus, τελεται: by Theodotion, καδησειμ. Biel also quotes the version of Drusius, who renders the latter part of the verse, ου εποιουν ενδυματα τοις εκπορνευουσιν απο κυριου. The subject is too disgusting to admit of detail; and it will be sufficient to refer the reader to Firmicius Maternus de Err. Profan. Relig. s. 10. for an account of one of these priests of Venus; and to Herodotus, Clio, c. 199. for the appropriation of the wages. Schoettgen, Hor. Hebr. in Phil. iii. 2. Apoc. xxii. 15. shews that the Jews understood by κυων a person not a Jew, one out of the covenant of God. Spencer contends for the literal interpretation of κυων, and conceives the precept to be directed against the worship of Isis and Anubis, of whom the former was worshipped with prostitution, the latter with a dog, or the price of a dog. See also Waite's Jewish Antiq. p. 61.

Lev. xix. 29, 30, 31. Do not prostitute thy daughter, to cause her to be a whore, ου βεβηλωσεις την θυγατερα σου εκπορνευσαι αυτην, lest the land fall to whoredom, (*apostacy*,) and the land become full of wickedness. Ye shall keep my sabbaths, and reverence my sanctuary. I am the Lord. Regard not them that have familiar spirits, neither seek after wizards, to be defiled, εκμιανθηναι, by them. I am the Lord your God.

Targ. Onkelos. Non prophanabis filiam tuam prostituendo eam.—Targ. Jerus. Non polluetis filias vestras dando eas ad scortationem, neque tardabitis locare filias vestras viris juxta tempus ipsarum.—Samarit. Ne polluas

filiam tuam prostituendo eam.—Pers. Non profanabis filiam tuam *deviam* faciendo illam.

Nature recoils at this precept in the ordinary sense of the English words, and the practice of men has never been such as to call for a general prohibition, except in the vain ambition of conciliating the heathen deities. The margin of the English Bible suggests a comparison of the text with Deut. xxiii. 17. in conformity with which it will receive its best exposition. Spencer interprets the word βεβηλοω, in this and other texts, de scortatione idololatricâ; especially of a woman, "idolis mancipatæ et in eorum sacris vitiatæ:" and this interpretation agrees with the comments of Grotius, Patrick, and Selden, on this particular text. In this exposition, εκπορνευω, as in other texts, is equivalent to βεβηλοω, and bears the active sense of *alienation* or *separation to a profane from a holy use.* The motive of the law is the necessity of reverencing or sanctifying the sanctuary of the Lord, which unavoidably would be, and actually was, violated by these abominations, abominations resulting in the general apostacy of the land, in the sense already explained.

Lev. xx. 2—8. Whosoever he be of the children of Israel, or of the strangers that sojourn in Israel, that giveth any of his seed unto Moloch, he shall surely be put to death; the people of the land shall stone him with stones: and I will set my face against that man, and will cut him off from among his people, because he hath given of his seed to Moloch, to profane my holy name, (το ονομα των ηγιασμενων μοι.) And if the people of the land do any ways hide their face from the man, when he giveth any of his seed to Moloch, and kill him not, then I will set my face against that man, and against his family, and will cut him off, and all that go a whoring after him, to commit whoredom with Moloch, (παντας τους ὁμονοουντας αυτῳ (Al. πορνευοντας οπισω αυτῳ) ὡστε εκπορνευειν αυτον εις τους αρχοντας,) from among their people. And the soul that turneth after such as have familiar spirits, and after wizards, to go a

whoring (*apostatize*, εκπορνευσαι) after them, I will even set my face against that soul, and will cut him off from among his people. Sanctify yourselves, therefore, and be ye holy; for I am the Lord your God: and ye shall keep my statutes, and do them: I am the Lord who sanctify you.

Targ. Onkelos. Omnes qui *errant* post eum ut *errarent* post Molech, . . . qui *declinavit* ad magos ut *erret* post eos.—Targ. Jerus. omnes qui *errant* post eum, *errandum* post cultum alienum . . . et homo qui *declinaverit* . . . *errando* post hæc.—Arab. omnes *errantes* cum eo post idolum, et quicunque *diverterit*, ut *seducant* homines post eos.—Syr. cum omnibus qui post eum *aberrant* eo quod *aberrent* post extraneam . . . et anima quæ *abierit* post magos . . . atque *aberraverit* post eos.—Pers. omnesque *deviantes* post eum ad *deviandum* post Molech . . . anima autem quæ respexerit ad pythones, . . . ad *deviandum* post illos.

The commentators understand by giving of the seed to Moloch, an idolatrous dedication of children to that idol, either by actual immolation, or by carrying them, or obliging them to pass, through the fire, or between fires, kindled for the purpose, as acts of lustration or purification. With this exposition, εκπορνευω in this text will bear the sense of an idolatrous dedication to Moloch, accompanied by alienation from the true God, and aggravated by the previous dedication of the children to him in circumcision, and by the defilement of his sanctuary and tabernacle, when he "was sacrificed unto otherwhere, or by other wayes, than he commanded, Lev. xvii. 4, 5. or when they sacrificed unto idols, and yet would come into the sanctuary to serve God also." Ainsworth. There are some remarkable variations in the texts which relate to this profanation, and in some of which the words *through the fire* are rightly marked as an interpolation in the English version. In Lev. xviii. 21. the people are forbidden to let any of their seed pass *through the fire* to Moloch. This is

rendered by the LXX, that they should not give their seed, λατρευειν τῳ αρχοντι, but by Aquila, Symmachus, and Theodotion, more consistently with the Hebrew, παραβιβασαι τῳ Μολοχ, to pass them over to Moloch from the true God. In the present text the initiation to apostacy is very singularly expressed, τους ὁμονοουντας αυτῳ, ὡστε εκπορνευειν αυτον, as if there were certain persons concurring or consenting in the apostacy of the particular offender; or, according to the Alexandrian MS. following the example of his apostacy, (πορνευοντας οπισω αυτῳ,) so that in their company he alienated himself or his children to the idol. The apostacy with the wizards may denote no more than a desertion of God and a renunciation of his wisdom, with a disposition to be defiled in the abominations of the heathen, and an approbation of their magical rites. In respect of this apostacy it appears on the collation of the two texts that εκμιανθηναι in Lev. xix. 31. is equivalent to εκπορνευσαι in Lev. xx. 7. both bearing the sense of legal pollution.

Ezek. xvi. 20, 21. Thou hast taken thy sons and thy daughters, whom thou hast borne unto me, and these hast thou sacrificed unto them to be devoured. Is this of thy whoredoms a small matter, (ὡς μικρα εποργευσας,) that thou hast slain my children, and delivered them to cause them to pass *through the fire* for them, εν τῳ αποτροπιαζεσθαι εν αυτοις.

Aq. Sym. The. transtulisti et transduxisti eos.

In this passage the verb εποργευσας is coupled with the verbs εσφαξας and εδωκας, and the action of the several verbs results, εν τῳ αποτροπιαζεσθαι αυτα εν αυτοις. The sense of an expiatory sacrifice, which the ancient glossaries have fastened upon the word, is not inconsistent with the main purpose of the oblation; but it is at the same time agreeable to the etymology of the Greek word[t], and to the

[t] Αποτροπιαζομαι, *averser, abominor.* Scapula. Αποτροπιασμος is used of the scape-goat. Joseph. Ant. l. iii. c. 10. s. 3. Origen. c. Celsum, l. vi. s. 43. of an amulet, or means of averting evil. Joseph. l. i. c. 3. s. 6. ὡς ἱνα δικαιον ὑπερ

ancient versions of Aquila, Symmachus, and Theodotion, to understand it of the *alienation* or transfer from the Lord to Moloch of the children offered, or of him that offered them. In leading their children through the fire, and devoting them at the dictation of the priest, the parents initiated them with a view to their more perfect consecration at a future period; they abandoned their right over them, and transferred it to Moloch, to whom they dedicated them as they had been dedicated to God. Spencer de Leg. Heb. l. ii. c. 13. The Psalmist indignantly alludes to this offensive rite of the apostate Israelites: They were mingled among the heathen, and learned their works, insomuch that they worshipped their idols, which turned to their own decay; yea, they offered their sons and their daughters unto devils, and shed innocent blood, even the blood of their sons and of their daughters, and the land was defiled with blood:

και ΕΜΙΑΝΘΗ εν τοις εργοις αυτων,
και ΕΠΟΡΝΕΥΣΑΝ εν τοις επιτηδευμασιν αυτων. Ps. cvi. 35—38.

Joel iii. 3. They have cast lots for my people, and have given a boy for an harlot, τα παιδαρια πορναις, and sold a girl for wine, τα κορασια αντι του οινου, that they might drink.

Chald. meretricis.—Syr. pro mercede meretricum.

There is such a difference of construction between εδωκαν τα παιδαρια πορναις and τα κορασια επωλουν αντι του οινου, as in itself supersedes the idea, that the boy was the price given for the debauchery. Some copies read εν πορνειῳ, and if that word, as in other texts, is interpreted of an idol temple, the sense will correspond with ver. 5. τα επιλεκτα μου τα καλα εισενεγκατε εις τους ναους ὑμων, i. e. dedicando ea

του κοινου αποβανοντα ἱκουσιως αποτροπιασμους εμποιειν φαυλων δαιμονων ενεργουντων λοιμους η αφοριας η δυσκλοιας, η τι των παρακλησιων. Orig. c. Cels. l. i. s. 31. ὁια δυναμις παρεγενετο προς Βαλααμ . . . ἱνα αποτροπιασμον ποιηση των παλουμενων ὑπο του Βαλακ δαιμονων. Orig. Select. in Num.

idolis vestris. Poli Synops. and it is natural to suppose that the children were given, πορναις, to wait upon them, εν πορνειῳ, as the girls were given for the wine used in the idolatrous feasts. Or the word may mean no more than *foreign* women: and as the children of God had been given, πορναις, and sold to the Grecians, that they might be removed far from their border, the strict recompence or retaliation, ανταποδομα, should be, that the Lord would sell their sons and their daughters into the hand of the children of Judah, and they should sell them to the Sabeans, to a people afar off, εις εθνος μακραν απεχον, a term exactly corresponding with πορναις, in the sense of aliens.

Mic. i. 7. και παντα τα γλυπτα αυτης κατακοψουσι·
και παντα τα μισθωματα αυτης εμπρησουσιν εν πυρι·
και παντα τα ειδωλα αυτης θησομαι εις αφανισμον·
διοτι εκ μισθωματων πορνειας συνηγαγε,
και εκ μισθωματων πορνειας συνεστρεψε.

Chald. quandoquidem mercede meretricis cum sint congregatæ, in domum colentium idola tradentur.

Πορνεια may, according to some commentators, be understood of idolatry, *merces idololatriæ:* but there is an evident allusion to Deut. xxiii. 18. as has been observed by Drusius, "nihil illâ mercede vilius, unde et vetabatur in templum inferri." Poli Synops.

Baruch vi. 11. They will give thereof to the common harlots, ταις επι του στεγους πορναις, quæ sub tecto ipsorum sunt.

These πορναι, whose residence was in or near the temple, are the same with the women described in ver. 43. "The women also with cords about them, sitting in the ways, burn bran for perfume; but if any of them, drawn by some that passeth by, lie with him, she reproacheth her fellow, that she was not thought as worthy as herself, nor her cord broken." "Testatur Herodotus, l. i. c. 199. ὁ δε αισχιστος των νομων εστι τοις Βαβυλωνιοισι ὁδε· δει πασαν γυναικα

επιχωριην ἱζομενον εις ἱρον Αφροδιτης, ἁπαξ εν τῃ ζωῃ, μιχθηναι ανδρι ξενῳ. His affinia de Babyloniorum scortis, Belo devotis, habet epistola Jeremiæ, Barucho subnexa, quorum sensum nemo percipere poterit, nisi hæc Herodoti historia fidem prætulisset." Spencer de Leg. Heb. l. ii. c. 35. See also Bibl. Brem. Cl. iii. p. 217. Herodotus enters into detail of this abominable idolatry of the Assyrian Venus. In the Sibylline Oracles, p. 621. ed. Amst. 1689, is a passage nearly coinciding with the text, in censure of men, who among other acts of incestuous pollution,

και τεγεσιν πορνας εστησατε τας παλαι αγνας.

This interpretation of the word in the sense of idolatrous initiation or consecration, has no reference to Matt. v. 32. xix. 9. and it is for the reader to determine whether it affords any illustration of Acts xv. 20, 29. which has been variously interpreted of whoredom ordinarily so called, and supposed to be indifferent among the Gentiles; of sacrifices offered by prostitution; of the accubitus in an idolatrous temple, and the participation of an idolatrous feast. Each of these opinions has the authority of the highest names; but the first and the second are justified by the best examples of this use of the word πορνεια. The second coincides with the other acts forbidden to the Gentiles, and nearly resembles the sense which it has been now attempted to establish. In the investigation of the remaining interpretation of the word in the sense of marriage between the believing and the unbelieving, it is proposed to shew, from the texts which have not yet been brought under review, that the predominating sense of the word is *apostacy*, with a particular reference to a more intimate *communion with apostates or aliens* in the rites either of sacrifice or of marriage.

Schleusner, among other expositions of the word, includes *incest*, and he explains it in one text, Tob. iv. 13. *de conjugio cum muliere alienâ, h. e. gentili.* Parkhurst also explains it of *incestuous whoredom*, in which sense the

word is used 1 Cor. v. With reference to this text it is the remark of Bishop Jeremy Taylor, that although the word "be often used for adultery, yet I find it not used for *nuptiæ nefariæ*, or that which is usually called incest." If the Bishop had specified the texts in which the word "is often used for adultery," there would have been no occasion for the present investigation, or for the exhibition of proof that it is used for *nuptiæ nefariæ*. Hammond, in his paraphrase, explains it of "sins of uncleanness, and marriages within prohibited degrees;" and in his note he observes, that in this place it is "a general term to comprehend all unlawful desires of the flesh, acts of whatever prohibited carnality under it. For it is observable, that the precept given by God's positive command to the sons of Adam and Noah, and so to all mankind, which is styled by the Jews disclosing nakednesses, under which style all the marriages within the prohibited degrees, Lev. xviii. and all the unnatural sins, are contained, is, Acts xv. expressed by abstaining απο πορνειας, from fornication." The judicious Hooker came to the same conclusion upon this apostolic decree: "Very marriage within a number of degrees being, not only by the law of Moses, but also by the law of the sons of Noah, for so they took it, an unlawful discovery of nakedness; this discovery of nakedness by unlawful marriage, such as Moses in the law reckoneth up, I think it for mine own part more probable to have been meant, in the words of that canon, than fornication according unto the sense of the law of nature. Words must be taken according to the matter whereof they are uttered. The apostles command to abstain from blood: construe this meaning according to the law of nature, and it will seem that homicide only is forbidden. But construe it in a reference to the law of the Jews, about which the question was, and it shall easily appear to have a clean other sense, and in any man's judgment a truer, when we expound it of eating and not of shedding of blood: so if we speak of fornication, he that knoweth no law but onyl the

law of nature, must needs make thereof a narrower construction than he which measureth the same by a law wherein sundry kinds even of conjugal copulation are prohibited as impure, unclean, unhonest. Saint Paul himself doth term incestuous marriage fornication." Eccl. Pol. b. iv. s. 11.

The notion of incest in the mind of a Jew was by no means restricted to marriages contracted within the forbidden degrees; it extended to all intermarriage with the heathen, or strange women, as they are more commonly denominated, which they were on no account permitted to contract. The prohibitions of these marriages were expressly delivered, Exod. xxxiv. 12, 15, 16. Deut. vii. 1—4. for the observance of the Jews after their settlement in the land of Canaan; and they comprehended all the heathens as well as the seven nations of Canaan, which are particularly mentioned, because the Jews by residing among them were under stronger temptations to intermarry with them, and to incur the guilt of that apostacy which was justly apprehended, and which it was the purpose of the interdiction to prevent. The law thus recorded was of very ancient origin, and it was an occasion of offence even in the antediluvian world, that the sons of God, the posterity of Seth, saw the daughters of men, descended of Cain, that they were fair, and took them unto them for wives, without regard to "the will of God, whose law after forbade such profane marriages," Ainsworth in Gen. vi. 2. and made the great distinction by prohibiting the marriage of his people with the apostate heathen. It is of importance to remark, that the issue of this intercourse of the sons of God with the daughters of men is called by an ancient Hellenistic writer the sons της πορνειας[u]. The violation of this commandment, by the intermarriage of the Jews with heathen women during the captivity at Babylon,

[u] See Liber Primus Enoch de Egregoris, published from Syncellus by Fabricius Cod. Pseud. V. T. v. i. p. 193. It is supposed to have been written ab antiquissimo quodam Judæo ante Apostolorum, ut videtur, ætatem,

was an occasion of the deepest affliction to Ezra and Nehemiah, in whose judgment it amounted to a transmutation of the holy seed, and to a rejection of the covenant with God: παρηχθη σπερμα το ἁγιον εν λαοις των γαιων, και χειρ των αρχοντων εν τῃ ασυνθεσιᾳ ταυτῃ εν αρχῃ. The zeal of these reformers was powerfully exerted in correcting these excesses, and in compelling the people to put away these foreign wives. The utmost care was taken at all times by pious parents to prevent these marriages, in imitation of the example of Abraham in obtaining a wife for Isaac, and the deepest grief was felt whenever they were contracted, and was passionately expressed by Rebecca, on the marriage of Esau with the daughters of the land, by which he incurred the title of πορνος. The advantages of a descent from parentage, uncorrupted by foreign alliances, were a source of high satisfaction to the true Israelite. I am thy servant, and the son of thine handmaid, said the Psalmist, appealing to the mercies of God, not only in his own name, but in that of his mother also: nor did the great apostle call himself, Phil. iii. 5. a Hebrew of the Hebrews, without exulting in the purity of his lineage, uncontaminated by any pollution of servile or of Gentile blood. Spencer de Leg. Hebr.

These points are too familiar to be insisted upon; it is more necessary to shew that these incestuous or foreign marriages are represented under the names of πορνευω, πορνη, and πορνεια. Maimonides has explained the word πορνη, or זונה, of a heathen woman, or a maidservant, or a Jewish woman with whom marriage was forbidden under the name of incest, or some other sacred prohibition; and the Chaldee paraphrasts, who are valuable witnesses of the meaning of words in the interval between the captivity and the time of our Lord, have in Deut. xxiii. 17. Hos. iv. 10. explained the πορνη and πορνευω of the LXX, of servile and foreign marriages. This interpretation was also known in the primitive Church, and it has been revived by different writers on the continent. Schleusner, with a hesitation

which his own more mature exposition of the word in Tob. iv. 13. does not justify, refers to the dissertation of "Dan. Hen. Hering. de voce πορνεια in decreto apostolico, qui post L. C. Miegium ostendere conatus est, πορνειαν intelligendam esse de matrimonio cum gentili seu idololatrâ." The reasons on which Miegius grounds his opinion, that the word bears this meaning, "si non tantum . . saltem primario" in Acts xv. are, "1. quia tale conjugium huic ipsi controversiæ in personâ Titi occasionem dedit: 2. quia Heb. xii. 16. Esauus πορνος vocatur . . . ita etiam Judæis, gentilis זנח dicitur . . . Sic et sequentes Christiani semper etiam abhorrebant ab istiusmodi carnis sanctæ in carne gentili inquinamentis." Melet. Sac. de Off. Past. c. xvi. s. 21. Hering refers to another treatise of Jo. Frid. Frisch, qui "in commentatione de muliere peregrinâ apud Ebræos minime honeste habitâ allatis rationibus ostendit, etiam Gen. xxxviii. 15. 1 Reg. xxii. 38. (xxi. 19.) Isa. xxiii. 16. peregrinam mulierem vore זנח indigitari." Notwithstanding these references, Hering acknowledges the novelty of the opinion which he embraces; and in his own dissertation on Acts xv. 20, 29. published in Bibl. Brem. Nov. Cl. iv. he examines the previous expositions of the text; and having stated the ground upon which he rejects them, he proposes his own exposition of the word, as denoting marriage with idolaters, which he maintains by reference to the scope and occasion of the decree; by shewing from other passages that such marriages are called by the name of πορνεια; by producing reasons for which the apostles may have used this in preference to a less equivocal word; and by obviating the objections which may be made to the interpretation. He resumes and confirms the argument in another dissertation, Bibl. Brem. Nov. Cl. vi. "de doctrinâ Bileami, Nicolaitarum, et Jezabelis ad Apoc. ii. 14, 15, 20." Rosenmuller, in Actt. xv. 20. refers with approbation to another treatise in German, observing, "nec contemnenda est D. Guil. Abrahami Telleri sententia, hanc vocem, πορνειαν, explicantis de ma-

trimonio cum ethnicis. Exod. xxxiv. 15, 16. Num. xxv. 1, 2. Hebr. xii. 16." It will be proper to exhibit this exposition of the word in the texts in which it is as it were defined, with the illustrative remarks of Jewish and other commentators; and afterwards to trace the same sense of the word in other passages of the Scriptures. The texts which relate to the family of the priest demand the first attention.

Lev. xxi. 7. They, the priests, shall not take a wife that is a whore, or profane, γυναικα πορνην, (al. ενδιηλλαγμενην) και βεβηλωμενην, neither shall they take a woman put away from her husband: for he is holy unto his God.

Targ. Jerus. mulierem errantem in scortatione, et quæ nata est ex nefando coitu.—Pers. mulierem *deviam*.

Lev. xxi. 9. The daughter of any priest, if she defile herself by playing the whore, εαν βεβηλωθη του εκπορνευσαι, she profaneth her father, το ονομα του πατρος αυτης αυτη βεβηλοι. She shall be burned with fire.

Targ. Jerus. filia viri sacerdotis desponsata, quando profanaverit se errando in scortationibus, quamdiu est in domo patris sui, si scortatur.—Pers. cum cœperit esse *devia*.

Lev. xxi. 13, 14, 15. He, that is, the high priest among his brethren, shall take a wife in her virginity; a widow, or a divorced woman, or profane, or an harlot, βεβηλωμενην και πορνην, these shall he not take; but he shall take a virgin of his own people to wife: neither shall he profane his seed, και ου βεβηλωσει το σπερμα αυτου, among his people; for I the Lord do sanctify him.

Targ. Jerus. et quæ nata est ex illicito concubitu, et errantem post scortationem.

The law of the marriage of the priest was designed to preserve the purity of the sacerdotal lineage, and, as the law is repeated by Ezek. xliv. 22. to teach the people the difference between the holy and profane, and cause them to discern between the unclean and the clean. The priest was allowed to marry none but maidens of the house of

Israel, or a widow that had a priest before. The contrast or distinction is drawn, 1. between a widow or a divorced woman and a virgin; and 2. between a profane woman or a πορνη and one of his own people. The Jews understand by πορνη any woman *not* an Israelite; Hering: or an Israelitish woman, with whom a man had lain whom it was not lawful for her to marry; and by the profane woman, a woman born of such a person as a priest is forbidden to marry. Patrick, Selden. In the Testamentum xii Patriarcharum, a work of the first or second century, a reference is made to this law, in a manner which leaves no doubt of the sense in which it was understood by the writer. He offers to Levi advice very similar to that which Tobit offers to his son: προσεχε τεκνον απο του πνευματος της πορνειας· τουτο γαρ ενδελεχει και μελλει μιαινειν δια του σπερματος σου ἁγια. Λαβε ουν σεαυτῳ γυναικα, ετι νεος ων, μη εχουσαν μωμον, μητε βεβηλωμενην, μητε ΑΠΟ ΓΕΝΟΥΣ ΑΛΛΟΦΥΛΩΝ η ΕΘΝΩΝ. Fabr. Cod. Ps. V. T. v. 1. p. 570. This paraphrase is decisive in the explanation of the word πορνη, for which it is substituted. Philo the Jew suggests the same interpretation: τουτῳ και παρθενος εκ του ἱερου γενους ἁρμοζεται[x]. Grotius adverts to a similar law at Athens, which required quod rex uxorem duceret αστην, civem και παρθενον et virginem. Ubi nota αστην, quod hic sequitur *de populo suo*, et omnino jus id Atticum et multa alia ad Athenienses a Phœnicibus, ad hos ab Hebræis venerit. So the Athenian law of legitimacy was restricted to birth of a mother that was a citizen, νοθος ὁ εξ ξενης. It is added, that the priest shall not profane his seed, ου βεβηλωσει το σπερμα αυτου, which he would by marrying

[x] De Profugis. Opp. ed. Pfeiffer. v. iv. p. 274. He adds, with his usual interpretation of πορνη in the sense of a polytheist: χηρας γαρ και ἐκβεβλημενης και βιβηλου και πορνης ανηρ ουδεποτε γινεται, πολεμον ασκονδον και ακηρυκτον προς αυτας αει συγκροτων. Ἐχθρον γαρ αυτῳ το χηρευειν ἀριστης, και ἐκβεβλησθαι και πεφυγαδευσθαι προς αυτης, και παν ὁτι αν ᾖ βιβηλον πεισμα και ανιερον. Τοδε πολυμιγες και πολυανδριον και πολυθεον μεν ουν κακον πορνην ουδε προσιδειν ἀξιοι, την ἱνα ανδρα και πατερα τον ηγεμονα Θεον επιγεγραμμενην ηγαπηκως.

βεβηλωμενην και πορνην, or *ducendo extraneam*, (Olcaster in Poli Synops.) according to the received maxim of the Jews that the child inherits the condition of the mother. The children of any of these unlawful marriages would be profane and incapable of the sacerdotal office; and the priest who should violate the law and go in to an heathen woman was to be beaten as for a whore. Maimonides in Ainsworth.

There is more difficulty in explaining the law which respects the pollution of the daughter of a priest. Jewish and Christian commentators are agreed in expounding this rule of an act of whoredom; and it may seem presumptuous to dispute their unanimous decision. It may nevertheless be allowed to remark, that this law intervenes between two other laws, prohibiting the priest himself to marry a πορνην, or a woman not an Israelitess; and that in the latter of these laws the priest is forbidden to profane his seed by marriage with a foreigner. Now if in respect του εκπορνευσαι the priest's daughter may be thought to offend in the same manner as her father, namely, in marrying a πορνην, or if she should be profaned, βεβηλωθη, in the same manner as he would profane, βεβηλωση, his seed, namely, *extraneam ducendo*, and thereby contracting to his family the unholiness of the heathen, it seems necessary, from the analogy of the terms, to interpret the act of the father and the daughter, of an unlawful marriage with an alien. It is also worthy of remark, that the same word is applied to the woman's profanation of herself, and to her profanation of her father's name, εαν βεβηλωθη του εκπορνευσαι, το ονομα του πατρος αυτης αυτη βεβηλοι, both of which would be committed by her marriage with an alien. The interpretation has thus the advantage of coinciding with the general use of the word εκπορνευσαι in the sense of apostacy, and with the particular use of the words βεβηλοω and πορνη in this chapter. In another law, Lev. xxii. 12, 13. concerning the marriage of the priest's daughter unto a stranger, it is expressly provided, that during her mar-

riage she may not eat of the offering of the holy things; but if the priest's daughter be a widow, or divorced, and have no child, and is returned to her father's house, she shall eat of her father's meat; but there shall no stranger eat thereof. The purport of this law was to prevent such profanation of the holy things of the Lord as would follow if strangers were permitted to eat them. A distinction is therefore made between the priest's daughter who was a widow, and his daughter who was married to a stranger, and by her marriage had fallen into the condition of a stranger. "The Hebrews say, . . . that if she be a priest's daughter, be defiled and made an whore or profane, as Lev. xxi. 7. it is unlawful for her to eat the heave offerings for ever, according to the judgment of every profane person, for the profane is as the stranger in all respects." Maimonides in Ainsworth. In this comment the daughter of the priest married to a stranger is supposed to be in the same state with the βεβηλωμενη και πορνη, whom the priest was himself forbidden to marry, into whose condition the daughter would be degraded by marrying a stranger, βεβηλωθη του εκπορνευσαι, in which she was distinguished from women divorced and from widows. There is another law, Lev. xix. 29. which in the LXX is similarly expressed, but which the commentators have explained of idolatrous initiation, supposing it to be parallel with Deut. xxiii. 17. This last law is however explained by the Chaldee paraphrast, improperly according to Ainsworth, of servile marriages: "None of the daughters of Israel shall be the wife of a man that is a slave, and none of the sons of Israel shall take a servant to his wife." They considered that the condition of a Gentile slave was incompatible with the law of marriage.

Deut. xxiii. 2. A bastard, εκ πορνης, shall not enter into the congregation of the Lord.

Targ. Onkelos. non erit mundus mamzer.—Targ. Jerus. non est idoneus, qui natus est ex scortatione, in quâ est macula mala, quæ posita est in populis profanis ut accipiat

uxorem integram ex cœtu populi Domini: etiam generatio decima non erit idonea ei, quæ intret in congregationem Domini.—Samarit. spurius.—Vulg. mamzer hoc est de scorto natus.—Syr. filius adulterii.

The Hebrew word is *mamzer*, "which meaneth one born of a stranger, that is, not a lawful wife;" and, according to the Hebrew doctors, "the bastard spoken of in the law is he that cometh of any of the nakednesses or unlawful copulations forbidden in the law, Levit. xviii. It is lawful for him that is a bastard to marry her that is a stranger, and for her that is a bastard to marry him that is a stranger, but the children of them both are bastards, for that which is born goeth after the blotted person; for it is said, into the congregation of the Lord, and the congregation of heathens is not called the congregation of the Lord." Maimonides in Ainsworth.

Philo the Jew frequently refers to the text, which he invariably and distinctly interprets of polytheists or idolaters. Thus he pronounces of the builders of Babel, that they were men οἱ πολλους επιγραφομενοι των οντων ὡσανει πατερας και το πολυθεον εισηγουμενοι στιφος . . . των εκ πορνης αποκυηθεντων ουδεν, ὡς γ' οιμαι, διαφεροντες, ούς ὁ νομος εκκλησιας απεληλακε θειας ειπων· ουκ εισελευσεται εκ πορνης εις εκκλησιαν κυριου. De Confus. Ling. Opp. v. iii. p. 378. Ὡσπερ δε το πολυπουν και απουν . . . ακαθαρτα αναγραφεται· ούτως και ἡ αθεος και πολυθεος . . . δοξαι βεβηλοι. Σημειον δε, αμφοτερας ὁ νομος εκκλησιας ἱερας απεληλακε· την μεν αθεον, τῳ θλαδιαν και αποκεκομμενον ειρξας εκκλησιαζειν· την δε πολυθεον τῳ εκ πορνης ὁμοιως κωλυσας ακουειν η λεγειν. Αθεος μεν ὁ αγονος, πολυθεος δε ὁ εκ πορνης, τυφλωττων περι τον αληθη πατερα και δια τουτο πολλους ανθ' ἑνος γονεις αινιττομενος. De Migr. Abrah. ibid. p. 442. Οἱ πολυθειας ερασται, και τον πολυθεον εκτετιμηκοτες θιασον, οἱ εκ πορνης γεγονοτες, τον ἑνα ανδρα και πατερα φιλαρετου ψυχης Θεον ουκ ειδοτες, αρ' ουκ εικοτως ελαυνουται τε και φυγαδευονται. De Nom. Mutat. Opp. v. iv. p. 408. Clemens Alexandrinus adopts the same interpretation: ὁ εκ πορνης, ὁς πολλους ψευδωνυμους Θεους επιγραφεται αντι του μονου Θεου οντος.

Spencer, De Leg. Hebr. l. i. c. 6. in an elaborate dissertation on the text, has shewn, that although all the versions agree in interpreting the word of an issue "a thoro illicito," that interpretation in its ordinary sense cannot be reconciled with historical fact; with grammatical etymology; with reason and right; or with the analogy of the Scriptures; and that the word means, "alienigenam, gentilem, extraneam, a genere Israelitico alienum vel alienigenæ filium." He shews, that this exposition agrees with the proper translation of the word in Zech. ix. 6. and with the Chaldee paraphrase; with the context; with other passages of Scripture; with the character and disposition of the Jews; with the design of the law in separating them from idolaters; with their known aversion from strangers; and with the Hebrew root, which signifies, "peregrinari, alienum esse." In examining the probable reasons of this translation of the LXX, he alleges various instances in which, in the judgment of the Jews, and the use of Hellenistic writers, meretrix and peregrina, πορνη and αλλοτρια, are synonymous and convertible terms; and that by using the more obvious word αλλογενης the LXX might have given offence to the Gentiles. In the prosecution of his argument he affirms, that the apostle alludes to the condition of the *mamzers* in Ephes. ii. 12. and that no child of Jewish parentage was excluded, and no child of heathen parentage admitted. He concludes that this law gave occasion to the complaint of the stranger, Isa. lvi. 3. and to the gracious reply of the Lord, that such as were not strangers in disposition, as well as in descent, should be accepted. The result of this demonstrative argument, of which it is possible to give but a very brief analysis, is to prove, that ὁ εκ πορνης is the son of an *alien* woman; or, in other words, that πορνη denotes an *alien* or foreign woman.

It may be further concluded from some of the texts upon which the argument is founded, that πορνη denotes, in the words of Ainsworth, a stranger, that is, not a lawful wife;

not only an alien woman, but an *alien woman married to a Jew*, the γυνη αλλοτρια, such as were the wives of Solomon, and of the Jews in the time of the captivity. It is not improbable that the prophet Ezekiel, xliv. 9. alludes to the violation of this law, which under the captivity was infringed even by the priesthood, in his strong expostulation with the Jewish Church, at whose altars strangers were then permitted to serve: No stranger, no son of foreign birth, υἱος αλλογενης, uncircumcised in heart, nor uncircumcised in flesh, shall enter into my sanctuary, of any stranger, that is, of any sons of foreign birth, that are, εν πασιν υἱοις αλλογενων, among the children of Israel.

Gen. xxxiv. 31. And they said, Should he deal with our sister as with an harlot? ὡσει πορνη.

Targ. Jerus. sicut meretricem et scortum cui non est, qui requirat, fecisset sororem nostram, si non fecissemus hanc rem.—Pers. velut *deviam*.—sicut exeuntem foras. Bibl. Brem. Cl. iii. p. 442.

If the sons of Jacob had meant under this term to complain that Dinah had been ravished and reduced to the condition of an harlot, it would have been more appropriately used in the instant that they were apprized of the offence, and made an impediment to the arrangement of any conditions of marriage. Their father, according to Josephus, hesitated to accede to the proposal of Emmor, ου νομιμον ηγουμενος αλλοφυλῳ συνοικιζειν την θυγατερα. Ant. Jud. l. i. c. 21. s. 1. When her brethren heard of what had been done, they were grieved, and very wroth, because Shechem had wrought folly in Israel, or against the Israelitish family and Church; Biblioth. Bibl. or, according to the Testament. xii Patriarch. their anger, and especially that of Levi, was excited, εζηλωσε δια το βδελυγμα, ὁ εποιησαν εν Ισραηλ. This folly, or ασχημοσυνη, is used in Leviticus of the incestuous marriages, and in the present instance it consisted in Shechem's lying with Jacob's daughter, και ουκ ούτως εσται, say the LXX, or was not right or meet to be done, according to the Chaldee. They

further explained what ought not be done, when they settled the conditions of the marriage: it was the alliance of one uncircumcised with the sister and daughter of the circumcised. We cannot do this thing, to give our sister to one that is uncircumcised, for that were a reproach unto us. The learned Dodwell understands this reproach, or ονειδος, of a charge or ground of accusation against them, which would expose them to the vengeance of God. On Marr. in Diff. Comm. s. 14. where he treats of these unholy marriages under the name of πορνεια. The force of the objection was admitted as a point generally understood. The circumcision of the Shechemites was made the condition of the marriage of Dinah, and when the sons of Israel had cruelly and treacherously abused this condition, and exposed themselves to the just remonstrance of their father, they defended themselves with the question, Should he deal with our sister ὡσει πορνην[y]? Should he treat with the sister of the holy people as one of his own alien women, whom he was free to marry, and who would not have been profaned by the alliance? In the revival of their suppressed resentment, they seem to have forgotten the conditions which they had imposed, or to have judged them inadequate to excuse the dishonour done to the house of Israel. It is not said, in any part of the history, that Shechem επορνευσε with Dinah, or she with him: the act is described under very different terms, εκοιμηθη μετ' αυτης. εταπεινωσεν αυτην, and the report brought to Jacob was, ὁτι

y "Sichem, the son of Emmor, shall not insult or impose on us for his circumcision. Had we not done this thing, he had rendered our sister as a whore that had wandered from home, and had no avenger. Targ. Jonath. For if she had voluntarily prostituted herself, there had been no ground for their quarrel, according to the Hebrew doctors, because Shechem had not then offended against the laws of the sons of Noah, as they speak, i. e. the right of nations, which was not violated by a man's lying with a single woman by her free consent." Biblioth. Bibl. in ver. 31. In the same work it is admitted, that ver. 2. "seems to intimate as if Dinah herself were in some measure consenting, or at least not very reluctant." The offence on this principle was independent of the simple violation of Dinah.

εμιανεν ὁ υἱος Εμμωρ την θυγατερα αυτου, which may be understood of the personal injury, or of the defilement of the family of the faithful. The Jewish writers have laboured strenuously in defending the conduct of Jacob's sons, which the apocryphal heroine Judith, ix. 2, 3, 4. conceived to be meritorious, and her comment upon the transaction may be alleged in proof that in Jewish judgment the offence of Shechem consisted more in the incestuous profanation of the family, than in the ravishment of the person of Dinah: O Lord God of my father Symeon, to whom thou gavest a sword to take vengeance of the strangers, αλλογενων, who loosened the girdle of a maid, εις μιασμα, to defile her, and polluted her virginity to her reproach, εβεβηλωσαν εις ονειδος, for thou saidst, It shall not be so; but they did so. Wherefore thou gavest their rulers to be slain, and all their spoils to be divided among thy dear children, which were moved with thy zeal, and abhorred the pollution, μιασμα, of their blood. In Judith's opinion it was an occasion of pious commemoration, that vengeance had been taken, αλλογενων, and it was the sum of Shechem's offence, that he, who was a stranger, had defiled Dinah, εις μιασμα, had profaned or polluted her in the sense in which the word is used in the law, with reference to foreign marriages, and had corrupted the blood of Israel in the same manner as by the marriages with the heathens during the captivity, by which παρηχθη σπερμα το ἁγιον εν λαοις των γαιων.

Gen. xxxviii. 13—26. It was told Thamar, saying, Behold, thy father-in-law goeth up to Timnath to shear his sheep. And she put her widow's garments off from her, and covered herself with a veil, and wrapped herself, and sat in an open place, which is in the way to Timnath; for she saw that Shelah was grown up, and that she was not given unto him to wife. When Judah saw her, he thought her to be an harlot, πορνην, because she had covered her face: and he turned unto her by the way, and said, Go up, I pray thee, let me come in unto thee; for he knew not that she was his daughter-in-law. And she said,

What wilt thou give me, that thou mayest come in unto me? And he said, I will send thee a kid from the flock. And she said, Wilt thou give me a pledge till thou send it? And he said, What pledge shall I give thee? And she said, Thy signet, and thy bracelet, and thy staff that is in thine hand. And he gave it to her, and came in unto her; and she conceived by him: and she arose, and went her way, and laid by her veil from her, and put on the garments of her widowhood. And Judah sent the kid by the hand of his friend the Adullamite, to receive his pledge from the woman's hand; but he found her not. Then he asked the men of that place, saying, Where is the harlot (חקדשה, Aq. ενδιηλλαγμενη) that was openly by the way side? (που εστιν ἡ πορνη ἡ γενομενη εν Αιναν επι της ὁδου;) And they said, There was no harlot (קדשה, πορνη, Aq. ενδιηλλαγμενη) in this place. And he returned to Judah, and said, I cannot find her; and also the men of the place said, that there was no harlot in this place. And Judah said, Let her take it to her, lest we be shamed: behold, I sent the kid, and thou hast not found her. And it came to pass, about three months after, that it was told Judah, saying, Tamar thy daughter hath played the harlot, εκπεπορνευκε, and also, behold, she is with child by whoredom, εκ πορνειας. And Judah said, Bring her forth, and let her be burned. When she was brought forth, she sent to her father-in-law, saying, By the man whose these are I am with child: and she said, Discern, I pray thee, whose are these, the signet, and the bracelet, and the staff. And Judah acknowledged them, and said, She hath been more righteous than I, because that I gave her not Shelah my son. And he knew her again no more.

Targ. Jerus. videbatur in facie ejus veluti meretrix. . . . Annon filia sacerdotis est? educite eam ut comburatur.—(15.) Samarit. meretricem: in marg. *extraneam*.—(15, 24.) Pers. *deviam* . . . *deviationem* fecit, et ecce imprægnata est *deviationibus*.

It cannot be denied, that upon this occasion Thamar

assumed the position, the dress, and the character of an harlot in some sense, and that the words πορνη, πορνεια, and εκπορνευω, are appropriated to her and her offence. It has also been conceived, that, in the sentence pronounced by Judah, she was condemned not for incest, but for adultery. It may however be observed, that Judah himself felt no compunction or consciousness of wrong in what he had done; that he communicated upon the subject without any reserve to his friend the Adullamite; that he only desisted from enquiring after the woman from the fear of ridicule, μη καταγελασθωμεν; that it was the received opinion of the Jews, that under the law of the Noachidæ the man incurred no guilt in debauchery which was free from incest and adultery; and that in the issue, when Judah justified the act of Thamar, he brought against her no accusation of adultery. The Jewish law of chastity in respect of the woman was on the contrary so copious and so precise, that she could hardly offend without the violation of a particular law. The principal word applied to Thamar in the former part of this history is not זנה, but קדשה, a word properly meaning a *separation* to holy uses, but occasionally denoting, in the most opposite sense, a person devoted to prostitution in the service of the heathen divinities. This consecration, or rather desecration, is supposed by Parkhurst, on the authority of this text, to have been in practice among the Canaanites at the time; and his opinion is agreeable to the sense of the original word; to the translation of Aquila here, as in Deut. xxiii. 17. and to the old exposition which is extant in the Test. xii Patriarch. Fabr. Cod. Ps. V. T. v. i. p. 601. in which the people affirm, that there had been no τελισκομενη or τελουμενη in the place, and where Thamar's change of dress is interpreted of the bridal ornaments, in which it was the law of the Amorites την γαμουσαν προκαθισαι εν πορνειᾳ ἑπτα ἡμερας παρα την πυλην. The conduct of Thamar was also in strict correspondence with the rites of the Assyrian Venus: see above, p. 454. In this sense the

Adullamite appears to have put the question to the people of Enaim, and they retorted, in the words of the enquirer, that there had been no *kadesah*, no sacred prostitute in the place. It is plain, that in the first interview Judah did not contemplate a harlot of his own people, but according to the Samaritan and Persian versions, a woman *devia* or *extranea*. This *kadesah* or πορνη was afterwards accused by her own people, εκπεπορνευκε, a word which the LXX supplies no authority for interpreting in the sense of simple fornication, but which occurs in the sense both of idolatrous apostacy and idolatrous prostitution. If therefore it be supposed that the people had heard of the apostacy of Thamar, and of her acting the part of a *kadesah*, and that their accusation is founded upon that information, all will be consistent. Thamar will be spoken of by the Adullamite, by the people of Enaim, and by her accusers, as a *kadesah;* and as the fathers Ambrose and Augustin are agreed, Biblioth. Bibl. in justifying the motive of Thamar, which was to bear issue of the sacred line, she may be supposed, under the influence of this motive, to have felt the less repugnance in assuming the offensive character and condition of a kadesah, under the pretence of rendering to the true God a better service than the ordinary kadesah rendered to her idol.

But as different terms are used in different parts of the history, it may be thought necessary to put a different interpretation on the words of the Adullamite and the men of Enaim, and those of the accusers of Thamar. It is said of Thamar, not only that she εκπεπορνευκε, but that she was pregnant εκ πορνειας. If to be born εκ πορνης bears any analogy to being pregnant εκ πορνειας, it is certain that the former expression would convey to a Jew the sense of a conjugal union with *aliens;* and there are many texts from which it may be shewn, that to be born εκ πορνειας is to be the issue of an apostate or idolatrous parentage. The expression, εκ πορνειας, may thus be made auxiliary to the interpretation of the act implied in εκπεπορνευκε, which has

been shewn to relate to such an apostacy from the holy family, as is implied in the marriage of an alien, in the case of the daughter of a priest, in the very law which Judah is supposed to have anticipated in the sentence which he pronounced on Thamar, when he ordered her to be burned on the charge του εκπεπορνευκεναι. This interpretation may also be reconciled with the Test. xii. Patriarch. The people, seeing her in the bridal dress, κοσμικῳ νυμφικῳ, judged that she was married, γαμουσαν, especially as they saw her according to the law of the country, προκαθισαι εν πορνειᾳ, and confirmed in their suspicions that she was pregnant εκ πορνειας, pronounced that she εκπεπορνευκε. They knew that she was not married in the holy family; they did not suspect her of debauchery; and they concluded from her conduct, either that she had prostituted herself in the heathen rites, or had contracted marriage with the people of the land. Judah himself eventually approved and justified the conduct of Thamar, and retracted the sentence, which he had precipitately pronounced, and to which it has been supposed that he was moved by the authority of a prevailing opinion, respecting the infringement of a *peculiar* law, prohibiting the prostitution of a woman unmarried, of a woman reserved for a future marriage, or of a woman of certain rank and condition. Selden de Ju. G. et N. l. vii. c. 5. It is plain that Judah could not have contemplated in his judgment the adultery of Thamar, for, however she had been betrothed to his son Shelah, it was his fault that the marriage had not been completed.

Numbers xxv. 1, 2, 3. The people began to commit whoredom, εβεβηλωθη πορνευσαι, with the daughters of Moab: and they called the people to the sacrifices of their gods; and the people did eat and bow down to their gods: and Israel bowed himself to Baal-peor.

Targ. Jerus. et inceperunt populus profanare sanctitatem suam et aperire corpora sua idolo Peor, et scortari cum filiabus Moabitarum, quæ proferebant imaginem ipsius

Peor, quæ latebat sub fasciis earum et vocabant populum ad sacrificia idolorum suorum et comederunt populus in conviviis eorum, et incurvati sunt idolis eorum.—Pers. *deviare* post.

It may be thought that sexual intercourse is here at least implied under the word πορνευσαι, which the Chaldee paraphrase again translates, according to Ainsworth, "to erre or go astray," as he understands by εβεβηλωθη, the profanation of their sanctity. The LXX, in translating the subsequent reference of Moses, xxxi. 16. to this history, use the word αποστησαι: These called the children of Israel, through the counsel of Balaam, to commit trespass against the Lord, του αποστησαι και υπεριδειν το ρημα Κυριου, or, in the words of an old version extant in Orig. Hom. xxv. in Num. Ipsæ sunt quæ filios Israel secundum verbum Balaam *apostatas fecerunt.* Joshua, xxii. 17, 18. also calls the transaction ἁμαρτημα, and compares it with acts of *aversion* and *apostacy*, απεστραφητε, αποστητε. The Psalmist also, in his marked allusion to this history, takes principal notice of the idolatrous apostacy: They joined themselves, or were initiated, ετελεσθησαν, to Baal-peor, and ate the offerings of the dead. When Moses pronounces judgment on the offence of the people, he overlooks the supposed debauchery, and commands them to slay every man his men that were joined, τον τετελεσμενον, to Baal-peor. Thus it appears from the Scriptures, that the idolatrous initiation was the principal offence designated under the words εβεβηλωθη πορνευσαι, and in this interpretation the commentators of all ages are agreed, notwithstanding a certain bias in favour of the more obvious and ordinary meaning of the word. See Philo Jud. de Nom. Mutat. Opp. v. iv. p. 368. Selden de Diis Syris. Synt. i. c. 5. So Tertullian c. Gnost. s. 3. In Arithmis cum divertisset Israel apud Sethim, abeunt libidinatum ad filias Moab; invitantur ad idola ut spiritu fornicarentur; edunt denique de pollutis eorum; dehinc et adorant deos gentis et Beelphegor initiantur. The author of the Josephi Hypomnesticon, Fabr.

Cod. Ps. V. T. v. ii. p. 104, 120, 130. records the slaughter of the people, επιμεμενηκοτας τῃ δυσσεβει γνωμῃ της ειδωλολατρειας, and their punishment in Moab επι τῳ τελεσθηναι τῳ Βεελφεγωρ. The testimony of the learned Spencer is too valuable to be omitted: "Hoc modo populus Israeliticus in honorem idoli Peor se scortari testabatur, nam fœminis quibusdam illi miscebantur! Græci quidem θυγατερας tantum Moabi, at S. Cyrillus eos ιδικως vocat, τας του Βεελφεγωρ ιερειας, mulieres sacrificas Beelphegor. Eodem consilio diu postea, μετα των τετελεσμενων εθυον, cum initiatis sacrificaverunt, i. e. cum fœminis impietatis sacris imbutis et instructis, ut scilicet impuris harum fœminarum amplexibus se libidinem in honorem profani nominis exercere testatum darent." De Leg. Hebr. Diss. in Actt. xv. 20. c. 4. It is added, in a note from Theodoret, τετελεσμενους δε καλει τους τα της ασεβειας οργια μεμυημενους.

Whatever was the precise offence of the Israelites, it is certain, that the plague which followed the offence is called the plague for Peor's sake. It was in the midst of this plague, and of the sorrow which it occasioned, that Zimri brought in the Midianitish woman, or according to the LXX, that one of the sons of Israel brought a Midianitish woman to his brother. His offence, both in the history of the transaction, and in the reference to the judgment, was marked as a distinct offence accumulated upon the sin of the people; δια Φογορ και δια Χασβι· and Ainsworth remarks, that the word used in respect of his act signifies "a bringing to commit fornication, as in Gen. xx. 4." The reference of Josephus, Ant. Jud. l. iv. c. 6. to this whole transaction, is very different from the general interpretation. He makes Balaam to recommend a mission of the most beautiful of the Midianitish women, to captivate the Israelites: επειδαν δε κεχειρωμενους ὁρωσι ταις επιθυμιαις, καταλιπετωσαν· και παρακαλουντων μενειν, μη προτερον επινευετωσαν, πριν αν πεισωσιν αυτους αφεντας τους πατριους νομους και τον τουτους αυτοις θεμενον τιμαν θεον, τους Μαδιανιτων και Μωαβιτων σεβωσιν. He gives a highly theatrical colouring to the

conduct of the women in prosecution of this advice; representing their art in tampering with the passionate addresses of the Israelites, who λιπαρουντες ενεχειντο, μη σφας καταλιπειν, αλλα γαμετας αυτων εσομενας αυτοθι μενειν και δεσποινας αποδειχθησομενας παντων, ων ὑπηρχεν αυτοις. The women insist upon their apostacy as the only condition of their marriage: πιστιν δ' ευνοιας λαβουσαι την μονην ἡμιν αξιολογον νομισθεισαν, αγαπησομεν τον μεθ' ὑμων βιον ὡς γαμεται διανυσαι. δεος γαρ μη και κορον της ἡμετερας ὁμιλιας λαβοντες, επειθ' ὑβρισητε και ατιμους αποπεμψητε προς τους γονεις. He gives the same view of the history of Zimri, who under the influence of Cozbi, ου θυων τα πατρια και γαμον ηγμενος αλλοφυλον, boldly defends himself under the insinuations of Moses on the offences of the people, γυναιον τε ξενικον, ὡς φης, ηγμαι. It must be acknowledged, that this view is very consistent with the deep subtlety of Balaam's design, in promoting the apostacy of the people, not by a casual debauchery, but by a conjugal union, producing the permanent apostacy which was always apprehended from foreign marriages. See Hering, Diss. in Apoc. ii. 20. Bibl. Brem. Nov. Cl. vi. Origen, Hom. xxv. in Num. coincides in this view of the designs of Balaam, in words highly adorned, but evidently founded on the narrative of Josephus. Clemens of Alexandria, Strom. l. ii. c. 18. has not omitted to notice the tendency of the transaction: ουχι αι Μαδιηναιων γυναικες τω καλλει τω σφων πολεμουντας τους Ἑβραιους εκ σωφροσυνης δι' ακρασιαν εις αθεοτητα ὑπηγαγοντο; προσεταιρισαμεναι γαρ αυτους εκ της σεμνης ασκησεως εις ηδονας εταιρικας τω καλλει δελεασασαι επι τε τας των ειδωλων θυσιας, επι τε τας αλλοδαπας εξεμηναν γυναικας· γυναικων τε ἁμα και ηδονης ηττηθεντες, απεστησαν μεν του Θεου, απεστησαν δε και νομου. The author of the Josephi Hypomnesticon, c. 39. is more decided. In the chapter of which the title is, ὁσαι γυναικες τους ανδρας διεφθειραν, he affirms, και του λαου δε του Ισραηλιτικου την αναιρεσιν αι των Αμορραιων εποιησαντο γυναικες, κατα γνωμην του μαντεως Βαλααμ την τω Βαλακ εισηγηθεισαν, εις αποστασιν, αυτους επαγαγομενων.

An objection will probably be made to both of these interpretations from the words of the apostle, 1 Cor. x. 8. Neither let us commit fornication, πορνευωμεν, as some of them committed, επορνευσαν: which Schoettgen renders, neque idololatriam foveamus (ubi præcipue participatis eorum, quæ diis immolata erant, indigitatur) quemadmodum quidam illorum idola coluerunt. It will not be denied that the apostle uses the word in the same sense as it is used in the passage to which he refers. Under this word he means something distinct from idolatry, of which he had spoken in the preceding verse: and whatever be the guilt of debauchery, it may be asked, whether any sin of individuals is worthy to be classed among the public sins of idolatry, temptation of Christ, and murmuring against God; which provoked the general judgments of the Almighty, and with which it has no natural connexion, but in the sense of an idolatrous consecration, or a marriage with idolaters ending in apostacy, which under the name of some, was incurred by large bodies of the people.

Joshua ii. 1. vi. 17, 22, 25. Hebr. xi. 31. James ii. 25. Rahab the harlot, ἡ πορνη.

Chald. mulieris cauponariæ.—Arab. venditrix.

According to the Chaldee paraphrase she kept a house of public reception: Chrysostom calls her πανδοκευτρια, and Bishop Patrick reconciles the versions by alleging, that there is no doubt that she kept a public house; but such persons in those days made their bodies as public as their houses. Schleusner supposes that two Hebrew words, the one signifying *scortum*, the other *caupona*, were mistaken by the LXX, whose version was copied by the apostles. Ἡ πορνη, in the sense of the *foreigner* or *alien*, affords a very competent exposition of the peculiar circumstances and condition of Rahab in the Jewish history, in which nothing is recorded derogatory to her moral character, which is certainly not impeached in the long allusion of Clemens of Rome. Ancient but not very consistent tradition has made this woman of Canaan the wife of a Jew. In the genealogy of

Saint Matthew, Salmon is made the husband of Rachab, probably of another woman of the same name, as Rahab ἡ πορνη and Salmon were not contemporary. Justin M. makes her the wife of Joshua: ὁν γαρ τροπον Ιησους εκεινος, ὁ λεγομενος ὑπο του προφητου ἱερευς, ῥυπαρα ἱματια εφανη φορων, δια το γυναικα πορνην λελεχθαι ειληφεναι αυτον . . . οὑτως ἡμεις, κ. τ. λ. Dial. cum Tryph. c. 116. In the whole passage he seems to use πορνη, πορνος, and πορνεια, in the sense of an *alienation* from the covenant of God, or, according to Dodwell, of the *guilt contracted by alien marriages.*

Judges xi. 1, 2. Jephtha the Gileadite was a mighty man of valour, and he was the son of an harlot, γυναικος πορνης, and Gilead begat Jephtha: and Gilead's wife bare him sons; and his wife's sons grew up, and they thrust out Jephtha, and said unto him, Thou shalt not inherit in our father's house, for thou art the son of a strange woman.

Chald. mulieris tabernariæ.—Arab. cujusdam meretricis.

The word translated πορνη by the LXX is the זנה which the Jews explain of one of another tribe, or of a stranger, one of another nation: and so Josephus himself understands it, saying, that he was ξενος περι την μητερα, a stranger by his mother's side, or according to the law, ὁ εκ πορνης. He was the son of a favourite wife of his father, and the context asserts that she was a foreign woman. Patrick, Spencer.

1 Kings iii. 16. Then came two women that were harlots, γυναικες πορναι, unto the king, and stood before him.

Chald. mulieres tabernariæ.

In Poole's Synopsis, three reasons are assigned in proof that these women were not harlots in the ordinary sense: 1. that such women do not pass the night alone, nor do they bear children; 2. that David would not have tolerated such women at Jerusalem; 3. that such women would not have ventured into the presence of the king. Josephus calls them ἑταιροι του βιου, which Grotius explains of foreign

women not comprehended in the law. Patrick holds that they kept a house of public entertainment, as the Targum translates it, and were of the same condition as Rahab. The Jews suppose that they were not Israelites, but strangers. They may have been the foreign wives of Jewish husbands, who, having no legal interest in the children, did not interfere in the wrong which was sustained. Patrick.

1 Kings xx. 19. και αι πορναι λουσονται εν τω αιματι σου.
xxii. 38. και αι πορναι ελουσαντο εν τω αιματι.

It is not easy to assign any adequate meaning or motive for this interpolation of the LXX. No advantage is obtained by understanding it in the ordinary sense of prostitution. I. F. Frisch is said by Hering to have understood it in the sense of foreign women, and the same name is given by an early writer to the woman of Samaria. In this sense it may have been an aggravation of the judgment of Ahab, that, instead of his eyes being closed by his nearest kin, the last office of bathing his body should be performed by "foreign hands," or that foreign women should bathe in the pool of Samaria, in which his body was washed. Or is it an allusion to Jezabel, that all which his foreign wife or wives could do for him, was to bathe his bleeding body, and that while the swine and dogs (common designations of aliens) were licking it they should be sprinkled with his gore, and not scruple to wash themselves where he had been bleeding.

Ezek. xvi. 26—30. Thou hast committed fornication with the Egyptians, εξεπορνευσας τους υιους Αιγυπτου, and hast increased thine whoredoms, πολλακις εξεπορνευσας, to provoke me to anger. Behold, therefore, I have stretched out my hand over thee, and have diminished thine ordinary food, and delivered thee into the hand of them that hate thee, the daughters of the Philistines, that are ashamed of thy lewd way, θυγατερας αλλοφυλων τας εκκλινουσας σε εκ της οδου, ης ησεβησας. Thou hast played the whore also with

the Assyrians, εξεπορνευσας επι θυγατερας Ασσουρ, because thou wast insatiable; yea, thou hast played the harlot, εξεπορνευσας, with them, and yet couldest not be satisfied. Thou hast moreover multiplied thy fornication, διαθηκας. Chald. idola tua, Arab. fœdera. Theodoret τα πορνεια σου, in the land of Canaan unto Chaldee, γην Χαλδαιων. *al.* γην Χανααν και εις τους Χαλδαιους. How weak is thine heart, τι διαθω την θυγατερα, *al.* καρδιαν σου; seeing thou doest all these things, the works of an imperious whorish woman, γυναικος πορνης (Th. πορνη παῤῥησιαζομενη) και εξεπορνευσας τρισσως εν ταις θυγατρασι σου.

The argument upon this passage must depend principally on the version of the LXX, which is incompatible with the notion of simple prostitution; which may be interpreted of the several states of Jewish apostacy; but which requires some notion of πορνεια which the Jewish Church, considered in the character of a *woman*, could be supposed to commit with the *sons* of Egypt, with the *daughters* of Assyria, and with *her own daughters*, and which should not be incompatible with the notion of a covenant or contract. The daughters of strangers, αλλοφυλων, are they, who, according to the LXX, had seduced, εκκλινουσας, the Jewish Church from the way from which she had transgressed; and the same word, εκκλινουσας, is used to describe the influence of Solomon's foreign wives in tempting him to idolatry, and is connected with the original prohibition of marriage with the heathen. 1 Kings xi. 2. Exod. xxxiv. 16. Deut. vii. 3. The idea of idolatrous apostacy prevails throughout the chapter, but it was chiefly by marriage that the Jewish Church could apostatize with the daughters of the Assyrians, by taking them for wives for her sons, and with her own daughters, by giving them in marriage to the heathen. It was thus that she took pleasure with her lovers, εραστας εν οις επεμιγης, another word which is used of matrimonial connexion with the heathen, and of the mingling or confusion of the holy seed in the impurity of the heathen. Josh. xxiii. 12. Ps.

cvi. 35. 1 Esdras viii. It was thus that she multiplied her fornications, or, as the LXX translate, her covenants, διαθηκας, covenants of marriage with the heathen, resulting in apostacy, marriages which she was expressly forbidden to contract, and in respect of which she acted in the true character of a γυνη πορνη, a wife an alien by birth, by practice, and by alliance. The covenant is ordinarily interpreted of a league or treaty with the heathen; but it is obvious, that such covenant would not have been contracted with women, and least of all with Jewish women: Jerusalem could derive no advantage from a league with her own daughters.

Hosea i. 2, 3. The Lord said to Hosea, Go, take unto thee a wife of whoredoms, and children of whoredoms: γυναικα πορνειας και τεκνα πορνειας: for the land hath committed great whoredom, εκπορνευουσα εκπορνευσει, *departing* from the Lord. So he went and took Gomer, the daughter of Diblaim.

Chald. prophetiza prophetiam contra habitatores civitatis *idololatræ*, qui addunt peccare, quia *errando errabunt* habitatores terræ, a cultu Domini.—Syr. uxorem fornicariam et liberos fornicarios, quando valde fornicatura est terra, aversata a Domino.

It would be tedious to insist upon the several difficulties which perplex the interpretation of this text, or upon the moral objections which have been brought against the divine injunction addressed to the prophet, and against the supposition that the prophet in his prescribed communication with a harlot, in the ordinary sense of the word, could be a suitable type or emblem of the God of holiness. Of the various interpretations collected by Pocock, that of Lyra is the most unexceptionable, as it is the most agreeable to the use of the word, which he here interprets of a wife "that was a Gentile bred up in idolatry," and, as he unnecessarily adds, "so guilty of spiritual whoredom." A γυνη πορνειας is evidently equivalent to a γυνη πορνη, an idolatrous or heathen wife; and such an

alien and forbidden wife, Hosea, whether he were a priest, a prophet, or a private Jew, ordinarily zealous for the legal holiness of his people, would not think of marrying, without the authority and sanction of a particular commandment repealing the general prohibition. The children of such a marriage would be children, πορνειας or εκ πορνης, of idolatrous or heathen parentage; and there is certainly nothing in this parabolical history to require the supposition of Gomer's conjugal infidelity, or to justify the interpretation of πορνεια in the sense of adultery. This interpretation will faithfully represent the state of the Jewish Church, whose mother was an Hittite, and whose father was an Amorite, and being thus alien in her origin, and unfit and unworthy to be admitted into the covenant of God, she had been an alien in her practice also: the land had committed great whoredom, *departing* from the Lord, or rather, εκπορνευουσα εκπορνευσει ἡ γη απο οπισθεν Κυριου, *apostatizing*, *had apostatized*, from the Lord, a version in which the word *departing* is as unnecessary as it is confessedly gratuitous. The names of the parties, according to a writer in Poole's Synopsis, coincide with this exposition: he calls Gomer *Revolt*, and Diblaim the *Wilderness;* as if it had been said, I married Revolt, the daughter of the Wilderness: the one name representing the practice, the other the origin, of the Jewish Church. To this origin in the wilderness, allusion is frequently made in the judgment denounced on her idolatry: and in respect of her original condition it is said, Ye are not my people: and in reference to her subsequent marriage or admission to the covenant of divine favour, Ye are the sons of the living God. Thus Hosea in taking an alien wife was a type of the Lord, who had entered into covenant with an alien people; and when she was proved unworthy of the distinction, the prophet was again his representative in threatening to disown his alien wife.

Hosea ii. 2—5. Plead with your mother, plead; for she is not my wife, neither am I her husband: let her

therefore put away her whoredoms, εξαρω την πορνειαν αυτης εκ προσωπου μου, and her adulteries from between her breasts; lest I strip her naked, and set her as in the day that she was born, and make her as a wilderness, and set her like a dry land, and slay her with thirst: and I will not have mercy upon her children; for they be children of whoredoms, τεκνα πορνειας, for their mother hath played the whore, εξεπορνευσεν, she that conceived them hath done shamefully, κατησχυνεν.

Chald. opera sua mala . . . filii qui idololatriam perpetrant . . . fornicata est post pseudoprophetas.

An alliance with an alien woman was a meretricious, rather than a conjugal, connexion, which it was unlawful to contract, and an act of piety to dissolve. In respect of such a marriage with a γυνη πορνειας, Hosea might justly say, She is not my wife, nor am I her husband; nor was he bound to recognize the union, or fulfil its obligations; he had taken her, and was at liberty to discharge her: and so the Jewish Church being an alien had no claim on the marital care of the Lord. In respect of the issue of such a marriage, as they inherited the condition of the mother, and were properly τεκνα πορνειας, they had no claim of right upon the care of their father. The wife is therefore required to put away her whoredoms out of her sight, or rather, according to the LXX, the Lord threatens that he will take away her πορνειαν out of *his* sight, and her adulteries from between her breast. Adulteries is put metaphorically for idolatry, and πορνεια, according to the common use of the LXX, is put in connexion with adultery, and plainly and properly denotes apostacy, or the state of alienation from God. It is said, in reference to this state, 1. lest I strip her naked in punishment of her spiritual adultery; and, 2. in reference to her primitive alienation, lest I set her as in the day that she was born, and make her as a wilderness, and set her as a dry land, and slay her with thirst: and it is further threatened, it may be in aggravation of their mother's punishment, that pity should

not be taken of her children, for they be children of whoredoms, born of an alien marriage, and therefore incapable of pleading either in their own or their mother's name. In the same sense that πορνεια represents the state of the mother, it represents the state of the children also: and for the same reason that the prophet refused to compassionate the children, did he disown the mother of the children; for their mother hath played the harlot, εξεπορνευσε, hath apostatized, or been an apostate; she that bare them hath done shamefully, κατησχυνεν. It is in perfect harmony with this description, that it is said, (ch. v. 7.) They have dealt treacherously against the Lord, or forsaken him, εγκατελιπον, for they have begotten strange children; or, according to the Chaldee paraphrase, suscitarunt sibi ipsis liberos e filiabus gentium. In this view of the state of the γυνη πορνειας and τεκνα πορνειας, the original marriage was so completely nullified, that the Lord promises, after a judicial alienation, to betroth her as a new bride to himself, when she shall call him Ishi, or her husband, instead of Baali, or her lord. The perpetuity of these new espousals is very forcibly expressed: And I will betroth her unto me for ever; yea, I will betroth her unto me in righteousness, and in judgment, and in loving-kindness, and in mercies; and I will even betroth her unto me in faithfulness, and thou shalt know the Lord. The effect of this marriage should be such, that it should be said to them which were not-my-people, Thou art my people; and they shall say, Thou art my God. It is difficult to conceive a clearer expression of the previous state of alienation. In the following passage there is a plain allusion to the law of marriage with a heathen woman, whether that woman represent Gomer, or any other parabolical wife of the prophet.

Hosea iii. 1—3. Then said the Lord unto me, Go yet, love a wife beloved of her friend, yet an adulteress, γυναικα αγαπωσαν πονηρα και μοιχαλιν, according to the love of the Lord towards, καθως αγαπα ὁ Θεος, the children of Israel, who look to other gods, θεους αλλοτριους, and love

flagons of wine: so I bought, εμισθωσαμην, her to me for fifteen pieces of silver, and for an homer of barley, and half an homer of barley: and I said unto her, Thou shalt abide for me, καθησῃ επ' εμοι, thou shalt not play the harlot, και ου μη πορνευσῃς, and thou shalt not be for *another* man; so will I also be for thee, ουδε μη γενῃ ανδρι και εγω επι σοι.

Chald. non fornicabimini neque fraudabimini idolis.

Hosea was directed to love this wife, as the Lord loved the children of Israel, although in her disposition she loved evil things, and was an adulteress, figuratively put for an idolatress, as the Israelites looked to foreign gods, θεους αλλοτριους, gods not their own. The gift which he gave her was the marriage portion or dowry of the bride whom he had again betrothed, ii. 19, 20. and who, in strict correspondence with the ritual of the marriage of an alien or heathen woman with a Jew, was to remain in his house, καθιειται εν τῃ οικιᾳ σου, and bewail her father and her mother a full month, and after that thou shalt go in unto her, and be her husband, and she shall be thy wife, συνοικισθησῃ αυτῃ και εσται σοι γυνη. For this period the wife was not to depart, ου μη πορνευσῃς, she was not to be given even to her husband, ουδε μη γενῃ ανδρι. They were to wait for each other, καθησῃ επ' εμοι και εγω επι σοι. In the forlorn condition of this captive bride was represented the state of the Jews, without king, priest, sacrifice, image, ephod, or teraphim: in her union with her husband, the restoration of the Jewish Church to the goodness of the Lord in the latter days.

The type thus explained in these several passages has an exact correspondence and agreement with its antitype: Hosea married an alien; the Lord had entered into covenant with a people originally alien: Hosea disowned his alien wife; the Lord abandoned his alien people: Hosea, according to the ritual, entered into a new marriage with his alien wife; the Lord entered into an everlasting covenant with an alien people, comprising the whole body of

the Gentiles together with the Jews originally descended of an alien stock.

The apparent novelty of these expositions requires the exhibition of the authority from which they are principally derived: "Hoseas propheta jubetur a Deo sumere אשת זנונים. Difficile opus aggredietur, quicunque hic vel de scortatione verâ ac propriâ prophetæ a Deo jussâ cogitabit, vel omnia aut propheticâ tantum prædicatione, aut somniante aut stertente viro divino, non re verâ accidisse et gesta esse autumabit: vel quæ est omnium improbabilissima conjectura, cum Luthero, Tarnovio, aliisque sibi persuaserit, prophetam honestam virginem duxisse eique tantum scorti nomen imposuisse: difficile, inquam, opus aggredietur, qui hanc suam opinionem sive cum sanctitate Dei ejusque præceptorum sive cum fide SS. historicâ conciliare operam dabit. Sed si hic intelligas mulierem extraneam et gentilem omnia erunt plana: modo quod Hos. iii. 2, 3. observes xv. siclos non scortationis aliquam mercedem esse, sed novam et alteram dotem, quâ fœminam sibi denuo desponsavit propheta et loci, Deut. xxi. 13. memineris, ubi mulier peregrina per aliquot dies ante celebrandas nuptias domi considere jubetur. Atque tum et perspicua erit analogia typi et antitypi. Deus enim populum Israeliticum ex idololatricis nationibus extraxit suumque esse jussit populum; hoc ut effingeret propheta, mulierem extraneam assumpsit. Deus se ut maritum, ecclesiam Judaicam, ut desponsatam sibi rite mulierem, prædicat: hinc et propheta, ut Deo similis fieret, justum cum muliere illâ matrimonium iniit; nec adeo de scortatione quâdam hic erit cogitandum, quô pacto enim tum Hoseas Dei personam, mulier vero personam eccl. Jud. potuisset agere? Judæi postea a Deo aversi, ad idololatriam antiquam redierunt, ita ut infidelis mulier, rupto matrimonii vinculo, ad populares suos rediit. Deus iterum sæpiusque Israelem ex superstitioso deorum cultu retraxit per vates suos, et ad veram religionem antiquam quasi matrimonii fœdus reduxit: pari modo et Hoseas mulierem infidelem denuo sibi

desponsavit. Deus tandem bona ea, quibus sibi Israelem quasi in uxorem redemit, reddidit, possessionem terræ Canaaniticæ omnemque vini ac frugum copiam, ut novâ quasi dote datâ pristinum connubium renovaret, c. ii. 14, 15, 19. ss. ita et propheta novâ dote xv. siclis et sesqui chomero hordei ad renovandum matrimonium mulierem compulit. Atque hinc clarum esse ducimus non de scorto proprie sic dicti, sed fœminâ peregrinâ in matrimonium ducendâ Deum ad Prophetam esse locutum." D. H. Hering. Diss. in Actt. xv. 20, 29. s. 13. Bibl. Brem. Nova Cl. iv.

Hosea iv. 10—18. They shall eat, and not have enough: they shall commit whoredom, εποργευσαν, Chald. accipient uxores, and shall not increase, κατευθυνωσι: because they have left off to take heed to the Lord. Whoredom, πορνειαν, and wine, and new wine, take away the heart. My people ask counsel at their stocks, and their staff declareth unto them: for the spirit of whoredoms hath caused them to err, and they have gone a whoring from under their God. πνευματι πορνειας επλανηθησαν και εξεπορνευσαν. Arab. Syr. *averterunt* se. Chald. spiritus *erroris* ad *errorem* adegit eos et *aberraverunt* a cultu Dei sui. They sacrifice upon the tops of the mountains, and burn incense upon the hills, under oaks and poplars and elms, because the shadow thereof is good: therefore your daughters shall commit whoredom, εκπορνευσουσιν, and your spouses shall commit adultery, μοιχευσουσι. I will not punish your daughters when they commit whoredom, πορνευσωσι, nor your spouses when they commit adultery, μοιχευσωσι: for themselves are separated with whores, μετα των πορνων συνεφυροντο, and they sacrifice with harlots, μετα των τετελεσμενων: therefore the people that doth not understand shall fall, συνεπλεκετο μετα πορνης. Though thou, Israel, play the harlot, μη αγνοει, Chald. si erratis vos; yet let not Judah offend; and come ye not to Gilgal, neither go ye up to Beth-aven, εις τον οικον Ων, nor swear the Lord liveth. For Israel slideth back as a back-sliding heifer; now the Lord will feed them as a lamb in a large place. Ephraim is joined to

idols; let him alone, μετοχος ειδωλων Εφραιμ· εθηκεν εαυτῳ σκανδαλα. Their drink is sour; they have committed whoredom continually, πορνευοντες εξεπορνευσαν. Chald. *erraverunt.*

13, 14. Chald. fornicantur filiæ vestræ, quas *suscepistis de filiabus* populorum et nurus vestræ quas *accepistis filiis vestris ex populis* adulteria committunt . . . ipsi enim cum meretricibus societate se jungunt, atque cum scorto comessantur et potant, populus autem generationis, qui non intellexit legem, nonne collidetur.—14. Syr. Istæ cum fornicatoribus commiscent sese, et illi cum fœminis cursantibus per plateas sacrificant, et populus rationis expers amplexatus est scortum.—Arab. Isti cum fornicatoribus miscuerunt sese et cum fornicatoribus sacrificaverunt et populus prudens implicavit se cum meretrice.—Vulg. cum effeminatis sacrificabunt et populus non intelligens vapulabit.—Aq. εχωριζοντο μετα των ενηλλαγμενων, al. διηλλαγμενων. —Sym. ηκολουθησαν μετα των εταιριδων, al. ακαθαρτων.—The. κατηριθμησαν . . . μετα των κεχωρισμενων (al. και τοις βδελυγμασιν) εθυον.—15. Aq. Sym. The. Ebr. ει πορνευεις συ Ισραηλ, μη συμπλημμελησῃ Ιουδα.

There is copious and powerful evidence in this passage, corroborative of the exposition of πορνεια and the kindred words in the proper sense of apostacy. Εποργευσαν, they *deviated from*, is put in immediate opposition to κατευθυνωσι, they were *directed in* the right way; and is compared with the leaving off to take heed unto the Lord, Κυριον εγκατελιπον του φυλαξαι. In the spirit of this error or *apostacy*, they *erred* and wandered, επλανηθησαν, from their God, consulting their stocks and their staves; sacrificing upon the mountains, and burning incense upon the hills, in the company of persons initiated in the heathen rites, μετα των τετελεσμενων. Thus, according to the LXX, they betrayed their ignorance and folly, αγνοει, exhibiting it in vain and unavailing processions to Gilgal, and Beth-aven, or the house of On, the temple of the sun: or if, according to other versions, they *erred* and *apostatized*, it was by a

delinquency and offence, in which Judah was admonished not to concur, μη συμπλημμελησῃ. There was a refractoriness of mind, παροιστρωσα, in participating with idols, and in a continued and aggravated state of *apostacy*, πορνευοντες εξεπορνευσαν. There are however some expressions, which even this exposition does not explain. The πορνεια which took away the heart, and which was celebrated in the midst of wine, seems to denote a distinct part of the idolatrous feast in which the people μετα των πορνων συνεφυροντο and μετα των τετελεσμενων εθυον. The τετελεσμενοι are the same with the καδησιμ or τελεται, the initiated priesthood of idolatry, the consecrated prostitutes of the heathen temples, otherwise called ενηλλαγμεναι or κεχωρισμεναι, changed in their nature and their dress, *de viris facti fœminæ*, or *effœminati*, priests devoted and set apart to the service of Beelphegor, and of either sex, as may be conjectured from the different genders used in the different versions. The judgment of a people, thus inconsiderate, and either destitute of understanding, or failing in the improvement of their knowledge, or voluntarily acting in defiance of their better judgment[z], is that they shall be precipitated and confounded. According to the LXX, it was not their judgment, but part of their offence, that ὁ λαος ὁ μη συνιων συνεπλεκετο μετα πορνης. It has been supposed that the words μετα πορνης belong more properly to the following verse; but if the present reading of the LXX, supported by the Syriac and Arabic versions, be approved, and the words be read in connexion with συνεπλεκετο, it is suggested whether they do not mean, that there shall be either *judicially* a confusion of the people of God *together with* their apostate Church, collectively described as in other texts by the name of πορνη: or whether there shall not be such a confusion *offensively*, through the intimate communion and

[z] See Clem. Alex. Pæd. l. i. c. 19. where the words are thus recited: ὁ λαος ὁ συνιων συνεπλεκετο πορνῃ. It is immediately added, δεικνυσιν αυτων φανερωτερον το ἁμαρτημα, συνιεναι αυτους ὁμολογων ὡς εκοντας ἁμαρτανοντας.

marriage of the people with the heathen, συνεπλεκετο πορνῃ, according to Clemens Alex. who elsewhere makes it equivalent τῃ παρα διαθηκην ενεργειᾳ: amplexatus est scortum. Syr. implicavit se cum meretrice. Arab. The effect of these communications was to exculpate the offence of the women, and to protect them from the punishment which was due. The whole case may be arranged in the following parallelism.

εκπορνευσουσιν αἱ θυγατερες ὑμων
και αἱ νυμφαι ὑμων μοιχευσουσι·
και ου μη επισκεψωμαι
επι τας θυγατερας ὑμων, ὁταν πορνευσωσι,
και επι τας νυμφας ὑμων, ὁταν μοιχευσωσιν·
ὁτι αυτοι μετα των πορνων συνεφυροντο
και μετα των τετελεσμενων εθυον,
και ὁ λαος ὁ μη συνιων συνεπλεκετο μετα πορνης.

If the offence of the men in respect των πορνων, and in respect των τετελεσμενων, is one and the same; if there is no variation but in the terms, as in Deut. xxiii. 17, 17. according to the LXX; and if that offence is communication with the idolatrous priesthood; the offence of the women, which is but the counterpart of that of the men, will be most consistently explained of an idolatrous devotion, in which married women could not participate, without an act of adultery. But if the offence of the men, in respect των πορνων, denotes their intermarriage with the heathen women, and in respect των τετελεσμενων, the worse abomination with the priesthood of idolatry, there will be a corresponding difference in the offence of the women also: and the offence of the daughters, ὁταν πορνευσωσι, will be consummated in marriage with the heathen; and the same or any similar communication on the part of the wives will be aggravated by the guilt of their adultery. This exposition of the word πορνων in respect of the men, and of πορνευσωσι in reference to the women, is authorized by its use in other passages; by the Chaldee paraphrase of εποργευσαν

in v. 10; by *accipient uxores;* by the reference of the same paraphrase in this very verse to Gentile women; by the inverted reasoning in which these marriages are ascribed to *apostacy*, as *apostacy* is said in other texts to be the result of these marriages; and by the singular expression, συνεφυροντο μετα πορνων. The verb συμφυρω denotes some extraordinary pollution, some peculiar incest, as in the Greek version of Ezekiel xxii. 16.[a] where it stands at the head of a catalogue of crimes, comprising various acts of incest and transgressions of the pure law of marriage: and while the *separation* implied in the original word denotes an *alienation* from the household of God, the *connexion* involved in the Greek signifies the most intimate *union with aliens and apostates*[b]. There is the same variation from the original in the use of the word συνεπλεκετο, which denotes very equivocally the *confusion* resulting from the communion of the Jews with aliens and apostates, in consequence of which, according to the Greek version of Ezekiel, αναμεμιγμενοι παντες, or εις συγκρασιαν μιαν, and placed under the judgment, I will scatter thee among the heathen, and disperse thee in the countries, and will con-

[a] Joseph. Ant. Jud. l. i. c. 10. s. 5. The word is used of the corruption of the sacred line, in speaking of the desire of Abraham, το απ' αυτου γενος μενειν τοις αλλοις μη συμφυρομενον, i. e. according to Zonaras, τοις αλλοις εθνεσιν ανεπιμικτον. See Hudson's note.

[b] "Primo intuitu videtur hic duplex dissonantia, quia in primo commate *separari* et *misceri* contraria videntur: sed propheta hic per metonymiam honeste antecedens ponit, pro quo Græci interpretes hic consequens seu rem ipsam impudicam exprimunt, adeo ut in re ipsâ non discrepant, nam qui *segregatur cum scortis* in animo habet *se cum illis miscere*. Deinde quando altero commate dicunt μιστα των τετιλεσμενων *cum initiatis sacrificarunt*, etiam non discrepant a textu sacro, quia קדשות erant publicæ meretrices Veneri sacræ Priapoque mancipatæ adeoque recte dictæ τετιλεσμεναι initiatæ, quasi *ἱερεις* vel sacerdotes Veneris vel Veneri sacræ, uti sic apud Gentiles tales τετιλεσμεναι vel publicæ meretrices, vel sacerdotes Veneris erant, quæ ante idola prostituebantur, virginitatis imminutæ pretium diis suis primitiarum loco offerentes, persuasæ oblatione illâ meretriciâ Deos placari sibique propitios reddi, ut Spencerus, ex Ambrosio, Herodoto aliisque scriptoribus demonstrat. De Leg. Heb. l. ii. c. 22." Outhov. in Bibl. Brem. Cl. i. p. 215. See also Selden de Diis Syris Syntagm. i. c. 5.

sume thy filthiness out of thee; and thou shalt take thine inheritance in thyself, or, as the margin reads, thou shalt be profaned in the sight of the heathen. It is said yet more distinctly in respect of these foreign marriages, Ye have corrupted the covenant of Levi, saith the Lord of Hosts: (part of that covenant was, that the priest of the tribe of Levi should not marry a πορνη.) Therefore have I also made you contemptible and base before all the people. . . . Have we not all one father? Hath not God created us? Why do we deal treacherously every man against his brother, by profaning the covenant of his fathers? Judah hath dealt treacherously, and an abomination is committed in Jerusalem: for Judah hath profaned the holiness of the Lord, which he loved, and hath married the daughter of a strange god. Mal. ii. 8—11. Compare Nehem. xiii. 27, 29. It was thus that they forsook the Lord, and that strange children were born unto them; Hos. v. 7. and it was thus when the daughters πορνευωσι, when the men,

μετα των πορνων συνεφυροντο
και μετα των τετελεσμενων εθυον,
και ὁ λαος μη συνιων συνεπλεκιτο μετὰ πορνης,

and that the common apostacy issued in the confusion and mixing up of the people of God in a promiscuous union with the people of the land.

Amos vii. 17. Thy wife shall be an harlot, πορνευσει, in the city.

There is no necessity for interpreting this text of the adultery of Amaziah's wife, or of her ravishment by military violence in the sack of the city, a sense which is conveyed by other words, and cannot be imputed without an acknowledged catachresis of the original word. It was consistent with her husband's offence, as the apostate priest of Bethel, that she should be consecrated to idols; or that when she was carried into captivity in Assyria she should become the wife of a foreign husband. The marginal

reference, Hos. iv. 13. agrees with either of these expositions. The judgment is on the man, not on the woman: Quod ille in spirituali fornicatione fecerat, idem in externâ experietur. The simple apostacy of his wife could have given no offence to Amaziah.

Tobit iv. 12, 13. Beware of all whoredom, απο πασης πορνειας, my son, and chiefly take a wife of the seed of thy fathers, and take not a strange woman, γυναικα αλλοτριαν, to wife, which is not of thy father's tribe; for we are the children of the prophets, Noah, Abraham, Isaac, and Jacob: remember, my son, that our fathers from the beginning, even they all married wives of their own kindred, and were blessed in their children, and their seed shall inherit the land. Now therefore, my son, love thy brethren, and despise not in thine heart thy brethren, the sons and daughters of thy people, in not taking a wife from them.

Tobit viii. 7. Now, O Lord, I take not this my sister for lust, δια πορνειαν, but uprightly.

In these two passages, the incestuous marriage of a Jew with a Gentile is very distinctly expressed by the word πορνεια. The general precept of Tobit was, that his son should avoid all πορνεια, and the chief means of fulfilling this precept was to take a wife of the seed of his fathers, and not a foreign wife, γυναικα αλλοτριαν, or πορνην, as she is usually called; following the example of his progenitors, who all took wives of their own kindred. If he did not avoid this πορνεια, he would despise the sons and daughters of his people, in not taking a wife from them. Tobias followed the instructions of his father, and took a wife of his kindred; and he therefore offers his thanksgiving to God: ου δια πορνειαν εγω λαμβανω την αδελφην μου ταυτην, αλλα επι αληθειας. Schleusner admits the interpretation of iv. 13. de conjugio eum muliere alienâ, h. e. gentili, Lex. ad LXX, but explains viii. 7. de legali expletione libidinis, Ibid. or de libidine procreandi naturali. Lex. ad N. T. In this exposition the antithesis ου δια πορνειαν αλλα επι

αληθειας is destroyed; and the imputed sense is expressed by other words, as τεκνοποιησω, Gen. xvi. παιδοποιεισθαι, or των ὁμιλιων γενεσει παιδων γνησιων απονασθαι. Philo. Jud. de cong. quær. erud. gratiâ. Opp. iv. 148.

Wisdom xiv. 12. The devising of idols was the beginning of *spiritual* fornication, πορνειας.

The πορνεια, which in this eloquent passage is attributed to the invention or mental contemplation, επινοια, of images or idols, whether in affectionate commemoration of the dead or devout homage of the living, may denote no more than apostacy from God. It is certainly distinct from the debauchery, which is described under other names, and under the influence of which men kept neither lives nor marriages any more undefiled, καθαρους, but one slew another traitorously, or grieved him by adultery, η νοθευων οδυνᾳ, by bringing in bastards, v. 24. Among the effects of this idolatrous apostacy are distinctly enumerated disorder of marriages, adultery, and shameless uncleanness, αταξια γαμων, μοιχεια, και ασελγεια, an arrangement in which αταξια γαμων appears to supply the place of πορνεια, as it is distinguished both from μοιχεια and ασελγεια, and in its etymology denotes marriages contracted out of the prescribed order. Are these marriages under the name of πορνεια in v. 12. made the effect of the idolatrous contemplation of idols, compare Hos. iv. 13. of which they are more commonly described to be the motive and principle? In Wisdom iv. 3, 5, 6. mention is also made of bastard slips, that shall not take root; and it is said that branches not initiated, κλωνες ατελεστοι, shall be broken off, and shall be excluded from the inheritance, as children εκ πορνης, as was Jephtha; and that children born of unlawful beds, ανομων ὑπνων, are witnesses of wickedness against their parents in their trial. Philo, in speaking of the children of Jacob by the concubines Bilhah and Zilpah, observes that they were νοθοι αδελφοι οἱ παλλακιδων οντες απο του χειρονος γενους του προς γυναικων, αλλ' ουκ απο του κρειττονος του προς ανδρων. De Gigant. Opp. ii. 440. The degeneracy of the

mother's race was the fault devolving on the Jewish bastard.

John viii. 41. We be not born of fornication, εκ πορνειας, we have one father, even God.

Pers. nos *illicite nati* non sumus.

It is the remark of Schleusner on the text: "Hæc verba, quæ proprie sonant *non spurii liberi sumus et ex illegitimo concubitu procreati* h. l. vertenda esse, *non sumus idololatræ*, sed posteri Abrahami, qui unum verum Deum colebat, jubent verba, quæ statim sequuntur, ἑνα πατερα εχομεν τον Θεον. This is a just paraphrase of the words, founded on the use of πορνεια in the sense of idolatry and apostacy. The meaning is more fully represented in Hammond's paraphrase: "None have dubious parents but they that are unlawfully begotten; we are not such; we are none of those to whom the style of children of whoredoms is given, Hos. ii. 4. but owned and acknowledged by God as his only children." Whitby also furnishes the means of explaining the text, although he fails in its application, adverting to the common idiom of the Jews, in denominating their treatises of idolatry treatises of fornication, and reciting the expressions of Philo Judæus[c], which have been already quoted under Deut. xxiii. 2. in which he interprets the ὁ εκ πορνης of the idolater or polytheist, who in his judgment differed in nothing των εκ της πορνης αποκυηθεντων, from those that are born of whoredom, and are therefore excluded by the law from the congregation. The intention of the Jews in the use of the expression is to obviate the insinuation, that they were not the children of Abraham, which they would have ceased to be if their

[c] Compare his fine comment on the declaration of the sons of Jacob, that they were all the sons of one father, Gen. xlii. 11. which he interprets of men, ἱνα και τον αυτον επιγιγραμμενοι πατερα ου θνητον αλλ' αθανατον, ανθρωπον Θιου, ὁς του αιδιου λογος ων εξ αναγκης και αυτος ισται αφθαρτος . . . οἱ δε ἱνι γενει χαιροντις και ἱνα πατερα τον ορθον τιμωντις λογον, την τε ευαρμοστον και παμμουσον συμφωνιαν αρετων τεθαυμακοτες, ευδιον και γαληνον βιον ζωσιν. De Confus. Ling. Opp. iii. 332.

line had been corrupted by foreign marriages, and they had been born εκ πορνης, whose fault would have contaminated her issue. They at the same time contended that they were the children of God, born by uncorrupted descent from Abraham, the sons of Jewish men by Jewish women, Hebrews of Hebrews, and therefore not liable to the imputation of a doubtful or spurious descent. The drift of the Jews in this expression, coupled with the reference of Philo to ὁ εκ πορνης, according to the demonstrative exposition of that text by Spencer, is of the highest importance in explaining the Jewish notion of πορνεια in the time of our Lord.

1 Cor. v. 1. It is commonly reported that there is fornication, πορνεια, among you, and such fornication, πορνεια, as is not so much as named among the Gentiles, that one should have his father's wife.

It is universally admitted by the commentators, that this fornication was incestuous; and the context defines it to consist in the violation of the pure law of marriage, by having a father's wife. The incest was not abated although the injured father was living at the time, as is inferred from 2 Cor. vii. 12.

1 Cor. v. 9—13. I have written unto you in an epistle not to keep company with fornicators, μη συναναμιγνυσθαι πορνοις, yet not altogether with the fornicators, τοις πορνοις, of this world, or with the covetous, or with extortioners, or with idolaters, for then must we needs go out of the world: but now I have written unto you not to keep company, if any man that is called a brother be a fornicator, πορνος, or covetous, or railer, or extortioner; with such an one, no, not to eat: for what have I to do to judge them that are without? Do not ye judge them that are within? But them that are without God judgeth. Therefore put away from among yourselves that wicked person.

The word πορνοι is frequently used by the primitive writers to denote the unconverted heathens, and, according to this exposition, Saint Paul, in speaking of the forni-

cators of this world, probably refers to nothing more than the general apostacy of the heathens. Thus Tertullian, De Idol. s. 14, alludes to the passage, licet convivere cum ethnicis: and Fabricius, Cod. Apocr. N. T. v. 1. p. 920. translates ver. 9. non loquor de ethnicis, qui vobis ferendi sunt. These πορνοι are the same with οἱ ἐξω[d], whom the apostle refuses to judge, and whose judgment he leaves unto God: who are called by Schoettgen, Lex. in v. ἐξω. Hor. Hebr. in loc. Non-Christiani; qui non sunt in ecclesiâ Christianâ; and who are evidently opposed to the οἱ ἐσω, whom he instructs the Corinthians to judge. If it be objected, that in this interpretation πορνοι is synonymous with εἰδωλολατραις, there is not more coincidence than between the other terms, extortioners and covetous persons. In the general precept, μη συναναμιγνυσθαι πορνοις, the apostle alludes to the particular case of the incestuous person, of which he proceeds to make a large application: μη συναναμιγνυσθαι, εαν τις αδελφος ονομαζομενος ἡ πορνος . . . τῳ τοιουτῳ μηδε συνεσθιειν. The brother who is a fornicator, and with whom the brethren are forbidden to eat, is interpreted by Tertullian of a Christian brother married to an unbeliever: Fideles gentium matrimonia subeuntes, stupri reos esse constat et arcentur ab omni communitate fraternitatis. Ad Ux. ii. s. 3. In 2 Cor. vii. 14—18, the apostle treats of the same subject, prohibiting more explicitly the marriages with the heathen, and insisting on the separation or distinction required in the people of God, who are not suffered to touch the unclean thing, or *person*, του ακαθαρτου. Compare Acts x. 14, 28.

1 Cor. vi. 13—19. Now the body is not for fornication, πορνειᾳ, but for the Lord; and the Lord for the body.

[d] Compare Rev. xxii. 15. Εξω δε οἱ κυνες και οἱ φαρμακοι και οἱ πορνοι, και οἱ φονεις και οἱ ειδωλολατραι, και πας ὁ φιλων και ποιων ψευδος.—κυνες, πορνοι and ειδωλολατραι are general descriptions των εξω. φαρμακοι, φονεις and ὁ ποιων ψευδος denote the common offences of idolaters. If there is any particular distinction implied in οἱ πορνοι, the ordinary sense is not adequate to describe the general guilt.

And God hath both raised up the Lord, and will also raise up us by his own power. Know ye not that your bodies are members of Christ? Shall I then take the members of Christ, and make them the members of an harlot? πορνης; God forbid. What! know ye not that he who is joined to an harlot, τῃ πορνῃ, is one body? for two, saith he, shall be one flesh. But he that is joined to the Lord is one spirit. Flee fornication, πορνειαν. Every sin that a man committeth is without the body; but he that committeth fornication, ὁ δε πορνευων, sinneth against his own body. What! know ye not that your body is the temple of the Holy Ghost which is in you, which ye have of God, and ye are not your own?

Æthiop. omne peccatum, quod facit homo ad extra, in corpore suo facit: et qui fornicatur in corpore suo peccat.

The elevation of an act of incontinency to the same mysterious dignity with the matrimonial union is alone an insuperable objection to the ordinary interpretation of this passage, of which the difficulty depends principally on the equivocal use of the words *body* and *bodies;* the former relating to the whole body or Church of Christ, and the latter being equivalent to the persons or bodies of individual or separate members of Christ. In this sense the passage is evidently alluded to by the apostolical father Clemens of Rome: ἱνα τι διελκομεν και διασπωμεν τα μελη του Χριστου και στασιαζομεν προς το σωμα το ιδιον; Ep. i. c. 46. This body was for the Lord, and in its corporate form constituted the temple of the Holy Ghost. What then was the πορνεια for which this body was not designed, and which was opposed to the Lord, for whom it was designed? It was apostacy: σωμα δε αλληγορειται ἡ εκκλησια . . . ου τῃ πορνειᾳ, ουδε τῃ απο του ευαγγελλιου αποστασει . . . πορνευει γαρ εις την εκκλησιαν, και το αυτου σωμα . . . ὁ δε κολλωμενος τῃ πορνῃ, τῃ παρα διαθηκην ενεργειᾳ, αλλο σωμα γινεται ουκ ἁγιον, εις σαρκα μιαν και βιον εθνικον. Clem. Alex. Strom. l. vii. s. 14. The earliest Latin fathers insist upon the particular nature of this apostacy. Cyprian recites the principal part

of the passage in proof that marriage should not be contracted with the heathen: and Tertullian also, with evident reference to the text, enumerates among the chief evils of marriage with the Gentiles, carnis sanctæ in carne Gentili inquinamentum; and, in arguing against second marriages, he maintains, Extranei hominis admissio minus templum Dei violat, minus membra Christi cum membris adulteræ commiscet. Ad Ux. ii. s. 2, 3. By such marriages, the man that was one body with the Lord, and one spirit with the Lord, would break that divine union; for he could not at the same time be mystically one with Christ, and actually one with an unbeliever. Origen, who was the first to assert the difficulty of the text, and is very inconsistent in its interpretation, nevertheless explains the *body* of the Church of Christ: Dic ei, quia templum Dei effectus sum, non mihi licet immundum aliquid illic inducere, nec fas est mihi violare templum Dei: sed et illud adde, quoniam, qui fornicatur in corpus suum peccat: non in istud corpus solum, quod templum Dei effectum est, sed et in illud quod dicitur, quia omnis ecclesia corpus Christi est, et in omnem ecclesiam videtur delinquere, qui corpus suum maculaverit, quia per unum membrum macula in unum corpus diffunditur. Hom. v. in libr. Jesu Naue, s. 6.

1 Cor. vii. 2. Nevertheless, to avoid fornication, διὰ τὰς πορνείας, let every man have his own wife, and every woman her own husband. Quisque homo habitet cum uxore suâ et quæque mulier habitet cum viro suo.

The passage relates not to the future, but to the past, to the marriages contracted before the conversion of the parties to the Christian faith, which is the subject of the apostle's discourse to the end of the seventh verse. There was an apprehension that these marriages were voided by the Christian profession, as they would have been by proselytism to the Jewish religion; and the apostle supersedes this apprehension by instructing the parties to have, to keep, and retain their respective consorts, and to live in

discharge of their conjugal duties. This is the proper meaning of εχειν γυναικα, which does not signify to take, λαβειν, a wife in marriage. These πορνειαι were distinguished from the cases of the unmarried and the widows, and were restricted to persons both of whom were unconverted at the time of their marriage. Δια is here used in the sense of *quod attinet ad:* the πορνειαι was one of the subjects, περι ών, the Corinthians had written to the apostle, and which he proceeds to determine: Now in respect of the things of which ye have written unto me, and especially as concerns τας πορνειας. The apostle clearly distinguishes the πορνειαι from the ordinary communication of the sexes, which he resolves without hesitation: καλον ανθρωπῳ γυναικος μη απτεσθαι: but the decision was more difficult where the parties had been married before their conversion. Origen, De Orat. calls the passage the place της παρανομου μιξεως ὑπο του αποστολικου λογου, κατα συγγνωμην ου κατ' επιταγην συγκεχωρημενης. The authorized version rests on the paraphrase of Chrysostom.

2 Cor. xii. 21. Lest when I come again my God will humble me among you, and I shall bewail many which have sinned already, and have not repented of the uncleanness, and fornication, and lasciviousness, επι τῃ ακαθαρσιᾳ, και πορνειᾳ, και ασελγειᾳ, which they have committed.

Ephes. v. 3, 5. But fornication, and all uncleanness, πορνεια δε και πασα ακαθαρσια, or covetousness, let it not once be named among you, as becometh saints: for this ye know, that no whoremonger, nor unclean person, πορνος η ακαθαρτος, nor covetous man, who is an idolater, hath any inheritance in the kingdom of Christ and of God.

Coloss. iii. 5. Mortify therefore your members which are upon the earth; fornication, uncleanness, πορνειαν, ακαθαρσιαν, inordinate affection, evil concupiscence, and covetousness, which is idolatry.

The sense of πορνεια, in these and some other texts, (as

Rom. i. 29. 1 Cor. vi. 9.[e] Gal. v. 19.) will depend upon the weight of the evidence in favour of the Hellenistic meaning of the word. It is sufficient to remark, that πορνεια is in all these texts a specific offence, distinct from ακαθαρσια, not requiring that indefinite sense which was fixed upon it in later ages, nor the more restricted sense of adultery, which is more properly included under ακαθαρσια, and is in some texts expressly distinguished from πορνεια. Gentile hearers might receive adequate instruction from the ordinary sense of the expression, although to the Jews it would convey a separate admonition, accumulated upon the general precept delivered under the word ακαθαρσια.

Hebr. xii. 16. Lest there be any fornicator, πορνος, or profane person, as Esau.

" Esauus πορνος vocatur, non quod scortator fuerit, sed quod contra voluntatem parentum alienigenas duxerit." Miegius de Off. Past. c. xvi. In this respect the Midianites seduced him αδελφον αυτων γενεσθαι δια της πορνειας και δια της ειδωλολατρειας. Test. xii Patr. Fabr. Cod. Ps. V. T. v. 1. p. 745. There is no record of his fornication but in his marriages with the daughters of the land, which were a grief of mind to Isaac and Rebecca. " The wives he took were absolutely aliens, and out of the covenanted family, contrary to the pious caution of his holy grandfather, . . . and to that rule of matrimony among the patriarchs which united in that holy state his father and mother. He gave an early proof of the perverseness of his temper in marrying these women without the knowledge of his parents, . . . or, if with their consent, at least contrary to their inclinations." Biblioth. Bibl. See Allix's Reflections on the Old Test. p. 78.

Rev. ii. 14. The doctrine of Balaam who taught Balak

[e] Griesbach notes that some MSS. read πορνειας for πονηριας in 1 Cor. v. 8. where it would bear the sense of error in opposition to αληθειας, or it would be an allusion to the peculiar abominations of the idolatrous feasts.

to cast a stumbling-block before the children of Israel, to eat things sacrificed to idols, and to commit fornication: φαγειν ειδωλοθυτα, και πορνευσαι.

The design of Balaam, according to the representation of Josephus, was to inveigle the Israelites into a participation of the idolatrous sacrifices, and into intermarriages with the daughters, of Moab: hâc enim re Balacum id effecturum, ut utraque gens aut brevi in unam coalesceret, adeoque ille utrique imperaret, aut saltim non haberet quod a populo tam affini timeret mali: quod si vero puellarum istarum ope insuper ad communionem sacrorum, quæ Diis Moabitarum exhibebantur, adducerentur Israelitæ, quod omnium optime fieri posset invitando ad epulas sacras ex ειδωλοθυτοις paratas: tum eos grave Dei sui utpote qui solus ab iis coli velit incursuros odium, tum eos ab eodem plane repudiatum iri, nec amplius forti ejus et tremendo patrocinio esse fruituros. Hoc modo certe si explicetur Bileami consilium, non erit adeo crassum et pingue, sed tam astuto et vaferrimo, ut erat, homine dignum." Hering, Diss. in Apoc. ii. 14, 15, 20. in Bibl. Brem. Nov. Cl. vi.

Rev. ii. 20. That woman Jezabel, who calleth herself a prophetess, to teach and to seduce my servants to commit fornication, and to eat things sacrificed unto idols, πορνευσαι και ειδωλοθυτα φαγειν.

It is not unreasonable to assume from the recurrence of the same expressions in vv. 14, 20, that it is meant to denote the same offence; and it has been strongly argued, that no man would have been found in the apostolical age to advocate and recommend either promiscuous intercourse or positive idolatry; that our Lord would not have included such offences under the name of ολιγα· εχω κατα σου ολιγα· and that there is no foundation for the hypothesis, that these words are used ironically. Our Saviour says further, ου βαλω εφ' ύμας αλλο βαρος, πλην ὁ εχετε· κρατησατε, αχρις ού αν ηξω. The same word, βαρος, is used in the apostolical decree, where it has a direct reference to the ordinances of the law; but fornication and idolatry were

restrained more by the natural than the Mosaic law, and our Saviour did not mean to add any thing to the ritual obligations which was not enforced in the apostolical decree. This burthen was however to be borne, until he should come to the destruction of Jerusalem, when all the distinctions of the law should cease. "Fuerunt scilicet Pergami homines, et Thyatiris fœmina quædam, ex Christianorum cœtu et in eo viventes, quibus nomina illa, sc. *Nicolaitæ et Jezabel*, dantur, vel quod iis propria erant, vel quod mysticâ quâdam aut symbolicâ ratione iis conveniebant, nam id certo definiri nequit, quamvis posterius priori sit probabilius. Hi *quemadmodum* olim Bileamus Balacum regem docuit, Israelitas ad nuptias cum idololatris ineundas et idolis oblatum cibum comedendum, Ps. cvi. 28. posthabitis Dei sui mandatis, allicere; *ita pariter* spreto divino per apostolos præcepto, tum temporis omnino adhuc observando, publice docere audebant, licere quovis casu vel in ipsis ειδωλειοις cum Gentibus de eo, quod diis eorum sacratum erat, cibum capere, et cum idololatris pro lubitu matrimonii vinculum nectere. Erant scilicet ex illis, qui γνωσιν se habere (cf. 1 Cor. viii.) et τα βαθη inspicere gloriabantur, Apoc. ii. 24. quâ opinione inflati apostolorum decreto ut ad idiotas tantum pertinente neque se neque eos, qui se ab iis erudiri paterentur, teneri existimarent, atque hinc sibi et his illa omnia licere. Quâ doctrinâ vero et agendi ratione cum Ecclesiam turbarent, Judæos fratres vehementer offenderent, aliosque deterrerent ex gente Judaicâ, ne Christo nomen darent, gravi castigatione omnino erant digni, nisi resipiscerent et mentem mutarent: ii autem, qui nimis indulgentes eos ita agentes tolerabant, et, ut officii ratio exigebat, scandalo sese non opponebant pro viribus, admonitione illâ, quæ eos vigilare jubet, ne res Christiana suâ nimiâ indulgentiâ aliquid detrimenti capiat." If it be objected, that this exposition does not agree with the character given to the Nicolaitans by the ecclesiastical historians, it may be observed, that the Nicolaitans of the second century are not the same with the Nicolaitans of

the Apocalypse, and even their offences have been unjustly aggravated[f]. Hering, Diss. in Apoc. ii. 14, 20. The principal texts, which it is the design of this dissertation to elucidate, remain to be brought under review.

Acts xv. 20, 29. We write unto you, that they abstain from pollutions of idols, (=meats offered to idols,) and from fornication, της πορνειας, (=πορνειας,) and from things strangled, and from blood.

Syr. ab immolato et a sanguine, et suffocato et scortatione.—Vulg. ab immolatis simulachrorum et sanguine et suffocato et fornicatione.—Arab. a sacrificiis idolorum et sanguine et suffocato et fornicatione.—Æthiop. quod relinquant necessario immolatum idolis et sanguinem et scortationem et mortuum et quod non vultis vobis fieri non faciatis contra fratres vestros.

The difficulty of the word πορνεια in this text may be easily conceived from the variety of its expositions: 1. by Salmasius; of prostitution properly so called, of the act of men and women qui in fornice sedebant, et corpus suum venale habebant: 2. by Heinsius; of the πορνικη θυσια or αλισγηματα της πορνειας, or sacrifices obtained by the wages of prostitution: 3. by Beza; of idolatry, and especially of the accubitus εν ειδωλειῳ ad idolothyta participanda: 4. by Heidegger; of πορνεια in polygamiâ et divortiis: 5. by Curcellæus, in the most ordinary sense; pro commixtione soluti cum solutâ: 6. Spencer adds his own opinion, that the word denotes venerem omnem extra conjugalem: 7. Hammond explains it to be pollutionem omnem contra naturam: 8. Selden understands it in a more restricted sense of incest de omnigenis turpitudinibus atque concubitibus ex lege Mosaicâ illicitis, id est, tam ex jure Noachidarum illicitis, quam ex Levitico: De Ju. G. et N. l. vii.

[f] It is worthy of enquiry, how far the misapprehension of the word πορνεια may have contributed to exaggerate the vicious character of the Nicolaitans, and how far the indiscriminate and promiscuous intercourse which they are charged with recommending consisted in the disregard of all distinctions του πορνευσαι, interpreted of marriage out of the communion.

c. 12. or of the concubitus in Lev. xviii. interdicti ac apostolorum linguâ της πορνειας nomine designati, etiam pro interdictis in Ecclesiâ Christianâ perpetuo interdicti. De Ann. Civil. c. 21. He also says, pro locorum discrimine in Testamento Novo, aliter atque aliter πορνειαν sumendum satis attestantur, qui in concilio Hierosolymitano eam non pro fornicatione, ut verti solet, sed pro quâdam idololatriæ specie intelligunt viri sane magni. Ux. Ebr. l. iii. c. 23. There is no proof that the extended sense of πορνεια proposed by Spencer was known to the Hellenistic writers: the opinion of Hammond is also unauthorized: the interpretations of Salmasius and Curcellæus are more appropriate to Greeks than to Jews; they have no connexion with the occasion or design of the decree, with the other acts which it proscribes, and which were in their own nature indifferent, or with the ceremonial law of the Jews to which the decree relates. In all the texts which have been recited, there is none which justifies the comment of Heidegger, or connects πορνεια with polygamy and divorce; and, although the opinion was held by Lightfoot, it is justly pronounced by Spencer unauthorized. The opinions of Heinsius and Beza have the support of many of the texts which have been alleged. Deut. xxiii. 18. contains an express prohibition of the πορνικη θυσια, or religious offering of the wages of prostitution; and the very word πορνεια, Hos. iv. 11. may comprehend all the circumstances of an idolatrous feast. In either of these expositions there is a just correspondence between πορνεια and the other terms of this apostolical canon. The principal objection is, that in the interpretation of Heinsius, the ειδωλοθυτα or αλισγηματα των ειδωλων are too nearly identified with πορνεια, and indeed he appears to anticipate the objection, by comprehending the two under one expression, αλισγηματα της πορνειας. Schleusner very heartily embraces the opinion of Beza: Alii denique, quibus ego accedere nullus dubito, de metaphoricâ vocis πορνεια significatione cogitarunt, ita ut significet idololatriam, non quidem crassam illam sed sub-

tiliorem et illâ ætate receptam, quæ ad concubitum in ειδωλειῳ et esum των ειδωλοθυτων spectat.

Hooker, whose very conjectures are worthy of deference, supposed it to relate to marriages within the Levitical degrees. The same opinion was held by Calvin and by Selden. Miegius, Hering, and Dodwell, also explain the word of that peculiar incest which attaches to marriage with aliens. Several instances of this use of the word have been already produced; and it is the argument of Hering, that such marriages were always offensive to the Jews, whom it was one principal design of the decree to conciliate, and were expressly prohibited from a conviction of their fatal power in tempting the people to apostacy; that foreign wives were called πορναι, and foreign marriages πορνειαι; and that it was worthy of the address of the apostles, who were scrupulous of offending the Gentiles, to inhibit these marriages in terms not unequivocal, in terms at once "clara fidelibus, satis obscura vero infidelibus." The principal objection to this interpretation is, that such marriages (and under the very name of πορνειαι) were affirmed by the apostle: but it is of importance to observe the great distinction between the confirmation of marriages already subsisting, and the prohibition of marriages not yet contracted: and whatever objection may now be made to the ambiguity of the word, its meaning was familiar to the Jews and to the Pharisees by whom the question was moved, and any explanation which was required might be easily received from the delegates who were intrusted with the publication of the decree. Diss. in Actt. xv. 20, 29. There was a very general agreement among the primitive writers, although they have left nothing which can define or circumscribe the sense of this particular term in the decree, that it was chiefly designed for the prevention of any relapse into idolatry; and this principal purpose should be kept in view in any interpretation which it may be thought proper to adopt. This is the main design of the original inhibition of ancient marriages; and it is remark-

able, that upon the occasions on which φαγειν ειδωλοθυτα και πορνευσαι and πορνευσαι και φαγειν ειδωλοθυτα are indiscriminately combined as matter of reproof, and in the consecutive argument of the apostle, δια τας πορνειας, 1 Cor. vii. and περι των ειδωλοθυτων, 1 Cor. viii. πορνεια is understood of alien marriage. The analogy of parallel expressions seems decisive of the sense of the apostolic decree.

Matt. v. 32. Whosoever shall put away his wife, saving for the cause of fornication, παρεκτος λογου πορνειας, causeth her to commit adultery.

Syr. præterquam ratione fornicationis.—Arab. Æthiop. sine fornicatione.—Pers. extra causam adulterii.—Vulg. exceptâ fornicationis causâ.

Matt. xix. 9. Whosoever shall put away his wife, except it be for fornication, ει μη, or μη επι πορνειᾳ, and shall marry another, committeth adultery.

Syr. præter adulterium.—Arab. præterquam ob fornicationem.—Pers. nisi stupri causâ.—Æthiop. nisi propter adulterium.—Vulg. exceptâ fornicationis causâ.

All the expositions of these texts may be reduced to those in which πορνεια is interpreted of fornication before marriage; of adultery properly so called; and of vice in its largest and most comprehensive sense. These interpretations are not authorized by any unequivocal use of the word in either of these senses. The sense of the word, which predominates in the Hellenistic writings, is that of religious apostacy; and it was the just persuasion of Hering, that the word "זנח et Græcum πορνευειν apud Judæos fuisse ambiguæ significationis, nec necessario ubique de fornicatione intelligendum, nisi id ex adjacentibus efficiatur, atque ut demonstrâsse mihi videor ad matrimonium stabile cum idololatris vel infidelibus indicandum etiam fuerit adhibitum." Diss. in Apoc. ii. 14, 15, 20. Now the nature of the relation does not require but preclude the sense of simple fornication: and it has been shewn that the word is distinct from μοιχεια, both in its general use, and in those particular texts, in which one

word is used in the clause of exception which justifies divorce, and another in the sentence which points out the contingent effects of an unlawful divorce. Selden affirms that πορνεια is equivalent to ערוות, or ασχημον πραγμα, or turpitudo, or uncleanness, for which divorce was allowed under the Mosaic law, Deut. xxiv. 1. and that the same word was probably used by our Lord: but it was the object of our Lord not to confirm but to restrict the abused law of divorce; to restore the perpetuity of marriage to the strictness not of the Mosaic but the primæval law of God: and it is quite as reasonable to suppose that our Lord used זנה, which is always translated πορνεια, as ערוות, which is rendered by a different word. The primary meaning of the word in the sense of apostacy or alienation has been more than sufficiently illustrated, and it is only necessary to make the application. The context demands some connexion between the sexes, distinct from simple fornication, which the nature of the relation precludes, and from adultery, which the word in question does not describe. If the λογος πορνειας be understood of a suit of adultery, it was no ground of seeking divorce from the courts, and there was no sentence or rule of law which annulled the marriage of the adulterer with the adulteress, who could be divorced only by connivance; but the suit of πορνεια or foreign marriage had been adjudged by Ezra, and had been positively forbidden by the law; and such marriages were at the time abhorred and held to be null. The sentence is otherwise expressed, ει μη επι πορνειᾳ, or μη επι πορνειᾳ. The first reading requires απολυσῃ αυτην to be understood, and the words in question may then be interpreted of the ground or cause upon which the woman is divorced: in the other reading, which is approved by Griesbach, γυναικα μη επι πορνειᾳ denotes the state or condition of the woman that may or may not be divorced: γυνη επι πορνειᾳ=γυνη πορνειας=γυνη πορνη, such a woman, being an unlawful wife, may be divorced: but the γυνη μη επι πορνειᾳ=μη πορνειας=μη πορνη, the lawful and genuine

wife may not be divorced. In this sense the permissive rule of exception corresponds with the sentence of the apostle; ει δε ὁ απιστος χωριζεται, χωριζεσθω· ου δεδουλωται ὁ αδελφος η ἡ αδελφη εν τοις τοιουτοις.—The doctrine is not however the purpose of the present investigation, which is restricted to the meaning of the word, and may now proceed with proofs collected from other Hellenistic writings, that the word does not mean adultery, and that it is to be understood chiefly of alienation and religious apostacy.

In that portion of the works of Philo the Jew which was edited by Pfeiffer, μοιχεια is found in its ordinary and specific sense: the word πορνεια does not occur in any sense; its classical signification is most commonly expressed by λαγνεια, επιθυμια, ηδονη. Thus ηδοναι, επιθυμιαι, και τα αδελφα τουτων παθη. Opp. ii. 162. λαιμαργιας και λαγνειας ὡσπερ εν χαμαιτυπειῳ. Opp. iv. 48. συνουσιαι ουκ εννομοι or εκνομοι. Opp. iii. 240, 248. φθορας και μοιχειας, και τας αλλας ουκ ευαγεις μιξεις. There are but two occasions on which he uses the word πορνευω. In the first he recites from Num. xxv. 1. εβεβηλωθη πορνευσαι, on which he weaves a mystical comment, describing the people ακολαστως και λαγνιστερον ὁμιλουντας ταις του νου θυγατρασιν, αισθησεσιν, ὡς χαμαιτυπαις και πορναις. Opp. v. 42. In another allusion to the same history he speaks chiefly of the initiatory alienation: ούτοι τελεταις ανιεροις ταις του Βεελφεγωρ τελεσθεντες και τα του σωματος στοματα παντα ευρυναντες προς την των εξωθεν επιχεομενων ὑποδοχην . . . κατεκλυσαν τον ηγεμονα νουν και επησαν εις βυθον εσχατον, ὡς μηδ' ανανηξασθαι, μηδε μικρον ὁσον δυνηθηναι ανασχειν. Opp. iv. 366. The other occasion upon which Philo uses the word πορνευω, is in allusion to the history of Thamar, whom he calls not only πορνη but πεπορνευμενη ψυχη, a figurative expression, in ascertaining the meaning of which he adds, ακολαστος γαρ η μαχλας η τριοδιτις σοβας, η το της ὡρας ανθος επευωνιζουσα . . . η το λεγομενον πολυανδριον κακον ὡς αγαθον μεταδιωκουσα, η πολυγαμιας ερωσα, η ὑπο μυριων σωματων ὁμου και πραγματων εμπαιζομενη και περιυβριζομενη. Opp. iv. 290. But even in this large paraphrase there is

not the faintest imputation of adultery cast upon Thamar. Philo's exposition of the εκ πορνης as the polytheist have been already recited, p. 463. and in the same manner he calls those πορνους, την ενος αρχην αποδιδρασκοντας, Opp. i. 248. and he explains the law of the priest who should marry a woman ιερατικου γενους not a πορνη, or according to his views, πολυμιγες και πολυανδριον και πολυθεον αθεον κακον. Opp. iv. 274. It is thus too plain to be disputed, that he understood πορνος, πορνη, and εκ πορνης, of a polytheist or apostate from the true religion. It would nevertheless be vain to deny that he was acquainted with the classical use of the word, although he applies it only to the case of Thamar. Opp. iv. 196, 288—292. On the history of Dinah he indulges in the most mystical comments, arguing, that in violation of the law, Deut. xxiii. 17. ως ουκ αν γενοιτο ποτε πορνη των του βλεποντος Ισραηλ, the Shechemites την παρθενην ψυχην εξαρπασαντες λαθειν ηλπισαν. Dinah was nevertheless *protected* from these attempts: ετι γαρ εστιν ἡ μισοπονηρος και αμειλικτος και αδικουμενων αρωγος, απαραιτητος δικη, σφαλλουσα τα τελη των αισχυνοντων αρετην, ὡν πεσουντων, εις παρθενειαν παλιν ἡ δοξασα αισχυνθηναι μεταβαλλει ψυχη. Δοξασα δ' ειπον, ὁτι ουδεποτε εφθειρετο. Opp. iii. p. ult. From such commentaries but little can be gleaned: Philo also uses the word πορνοτροφος, but the words under which he describes the prostitute, except in the case of Thamar, are χαμαιτυπαι. εταιραι. παλλακαι. παλλακιδες. But if πορνη in the time of Philo had borne that unequivocal meaning which later ages have fastened upon it, is it reasonable to suppose, that with the kindred words it should have occurred so seldom in this sense, and so frequently in a very different sense? It is a negative, but it is a powerful argument, that Philo, in not using the word πορνεια, gives no countenance to the interpretation in which it is confounded with μοιχεια.—It is of importance to observe, that he uses the simple word νευω, with its compounds ανανευω and εκνευω.

The twelve first books of the Antiquities of Josephus, which comprehend a period considerably more extended

than the canonical books of the Old Testament, contain much of the same negative evidence. The only word in question which he uses is πορνη, which in one single passage, l. ix. c. 6. s. 3. he applies to Jezebel, calling her φαρμακον και πορνην. In this position the word is of too obvious signification to require a renewed interpretation, even if it was not said in another place that Ahab learned from her, τους ιδιους αυτης θεους προσκυνειν. L. viii. c. 13. s. 1. Instead of the word πορνη, whether as used by the LXX, or in its ordinary sense, he substitutes the words ἡταιρημενη, l. iv. c. 8. s. 9, 23. Cf. Deut. xxiii. 17, 18. ἑταιραι τον βιον, l. viii. c. 2. s. 2. Cf. 1 Reg. iii. 16. εταιριζομεναι, l. v. c. 8. s. 11. Cf. Jud. xvi. 1. l. viii. s. ult. Cf. 1 Reg. xxii. 19. xxiii. 38. sec. lxx. For the word πορνευω, or the several senses which are now attached to that word, are used, φθειρειν δι' αρπαγης, l. i. c. 21. s. 1. of Shechem and Dinah: κοιτην μιαναι. ὑβρισαι γαμον, l. ii. c. 4. s. 5. of Potiphar's wife: καθυβριζω, l. v. c. 2. s. 8. Cf. Jud. xix. 25. βιαζομαι, l. vii. c. 7. s. 3. of David's sons and his wives: c. 8. s. 1. of Thamar and Amnon: συνελθειν, Ibid. πλησιαζω, l. vii. c. 11. s. 6. l. viii. c. 1. s. 2. It is the history of Amnon that τῳ δ' ερωτι καιομενος και τοις του παθους κεντροις μυωπιζομενος βιαζεται την αδελφην . . . ὑβρισασθαι φθαρεισαν ὑπ' αδελφου. l. vii. c. 8. For the word in its Hellenistic sense, and with reference to the various apostacies in which the people, according to the LXX, εξεπορνευσαν, the synonymous expressions used by Josephus are, εκτραπεντων δε εις ἑτερων εθνων μιμησιν, αποστραφησομενου το γενος ὑμιν. l. v. c. 1. s. 25. Solomon παρεβη μεν τους Μωυσεως νομους, ὁς απηγορευσε συνοικειν ταις ουκ ὁμοφυλοις . . . ἱνα μη τοις ξενοις επιπλακεντες εθεσι των πατριων αποστωσι. l. viii. c. 7. s. 5. Jeroboam εξηπατησε τον λαον και της πατρωου θρησκειας αποστησαντας εποιησε παραβηναι τους νομους. c. 8. s. 4. and ου διελιπεν ουδε ηρεμησεν εις τον θεον εξυβριζων. c. 9. ad fin. In the same manner all the kings of Israel εζητουν ὡς ἀποστησωσιν απο του Θεου τον λαον τοις καθ' ἡμεραν ασεβημασι. c. 12. s. 5. Especially Jehoram παση πονηρια χρησαμενος και ασεβεια προς τον

Θεον· παρεις γαρ τουτων θρησκευειν τους ξενικους εσεβετο. l. ix. c. 2. s. 2. Jehoram the son of Jehosaphat ου διελιπεν έκαστης ήμερας καινουργων επ' ασεβεια και λυμη των επιχωριων εθισμων . . . ην δ' ούτως εμμανης, ώστε τον λαον ηναγκαζεν επι τα ύψηλα των ορων αναβαινοντα προσκυνειν τους αλλοτριους θεους. c. v. s. 1. Cf. 2 Chron. xxi. 11, 13. Joash neglected την επιμελειαν προς τον Θεον· συνδιεφθαρησαν δ' αυτω και οί του πληθους πρωτευοντες. c. 8. s. 3. Jehoahaz was ασεβησας δ' όσα και οί πρωτοι του Θεου καταφρονησαντες. s. 5. Jehoram was εις τον Θεον ύβριστης και παρανομος . . . ειδωλα τε σεβομενος και πολλοις ατοποις και ξενοις εγχειρων εργοις. c. 10. s. 1. Ahaz was ασεβεστατος. παραβας νομους. βωμους αναστησας. θυων τοις ειδωλοις. c. 12. s. 1. God finally dispersed the Israelites παραβαντας τους νομους και παρακουσαντας των προφητων, οί προυλεγον ταυτην αυτοις την συμφοραν μη παυσαμενοις των ασεβηματων. c. 14. s. 1. Manasseh also απερρηξε μεν αυτον των του πατρος επιτηδευματων και την εναντιαν ετραπετο, παν ειδος πονηριας επιδειξαμενος εν τω τροπω και μηδεν ασεβες παραλιπων, αλλα μιμουμενος τας των Ισραηλιτων παρανομιας αίς εις τον Θεον εξαμαρτανοντες απωλοντο. l. x. c. 3. s. 1. The word πορνεια is not used by Josephus, but its ordinary sense is very frequently expressed by ύβρις, and occasionally by λογους περι μιξεως, l. ii. c. 4. s. 2. by φθορα in respect of Dinah, l. i. c. 21. s. 1. and in reference to that of Thamar and Amnon by αδικου και μιαρας επιθυμιας . . . ορμην της ορεξεως . . . αισχυνη . . . βια. l. vii. c. 8. s. 1. by προς τα αφροδισια και γυναικος όμιλιαν. c. 14. s. 3. and εις γυναικας εκμανης και την των αφροδισιων ακρασιαν. l. viii. c. 7. s. 5. The Hellenistic sense of πορνεια is expressed by γοητεια και πλανη. l. ii. c. 13. s. 3. and the men of Sodom, whose πορνεια is frequently made the subject of comparison in the Scriptures and primitive writings, are said to be προς το θειον ασεβεις, ώς μηκετι μεμνησθαι των παρ' αυτου γενομενων ωφελειων. l. i. c. 11. s. 1. If the words are not actually used by Josephus to denote the forbidden marriages of the faithful with the unbelieving, the paraphrase which Josephus has left upon Numbers xxv. sufficiently proves, that in his judgment they will bear

that interpretation; and his relation of the rejection of the foreign wives under Ezra, and of other incidents connected with alien marriages, affords adequate evidence of the extreme abhorrence in which they were held among the Jewish contemporaries of our Lord. Josephus, as well as Philo, uses the simple word νευω with its compounds απονευω and επινευω, and the manner in which he eludes the use of the words πορνευω and πορνεια gives probability to the opinion that he considered the words to be at least equivocal, and it may be unintelligible and even offensive to the Gentiles; and as may be inferred from the collation of parallel passages, ordinarily signifying corruption, διεφθαρησαν· impiety, ασεβεια· aberration, πλανη, εξαμαρτανω· and apostacy or alienation, αποστωσι. There is no doubt of the sense in which he uses the word μοιχεια.

In the fragments of the apocryphal Book of Enoch, collected by Fabricius, Cod. Pseudepigr. V. T. and supposed by him to have been written "ab Hellenistâ quodam Judæo ante apostolorum, ut videtur, ætatem," is an explicit instance of the use of the word πορνεια in the sense of alien marriage. It is related, not only that the Egregori, the sons of Seth, or of God, as they are called, went unto the daughters of men, και εκοιμισθησαν μετ' αυτων και εν ταις θηλειαις εμιανθησαν, s. 4. but that the angel Gabriel was sent, επι τους γιγαντας, επι τους κιβδηλους, επι τους υἱους της πορνειας, s. 7. And who are these υἱοι της πορνειας, but, in agreement with the interpretations already given, the issue of the Egregori by the daughters of men, the issue of a degraded and degrading marriage, proceeding in apostacy, and, according to the Jews, proscribed from the beginning of the creation.

The learned Dodwell, Cod. Ps. V. T. Grabe Spicileg. conceived the "Testamenta xii Patriarcharum Seculo I. condita, quia Stylus plane est Hellenisticus, qualis inter Seculi II. initia, in usu esse desiit." Later ages have been assigned to the work, and it has also been supposed to be interpolated: but the opinion of Dodwell is but too fully

confirmed in respect of the word πορνεια. The πνευμα πορνειας, an expression of frequent occurrence, is plainly equivalent to the πνευμα πλανης· and if it is said in one passage, ουκ επορνευσα εν μετεωρισμῳ οφθαλμων, Test. Isach. s. 7. it is said in another, ου πλαναται μετεωρισμοις οφθαλμων. Test. Benj. s. 6. Mention is made of πορνεια, which ουτε συνεσιν ουτε ευσεβειαν εχει εν εαυτῃ. Test. Reub. s. 6. Ολεθρος γαρ ψυχης εστιν ἡ πορνεια, χωριζουσα Θεου, και προσεγγισουσα τοις ειδωλοις. Ibid. s. 4. or τῳ Βελιαρ, so that, according to the prophecy of Enoch, οἱ υἱοι ὑμων μεθ' ὑμων εν πορνεια φθαρησονται. Test. Sim. s. 5. and, according to the same prophecy, πορνευσετε πορνειαν Σοδομων. Test. Benj. s. 9. The same apostacy and communication with aliens is otherwise predicted among the characters of the last times: προ του θυσιασαι κυριῳ, ληψεσθε τα εκλεκτα, εν καταφρονησει εσθιοντες μετα πορνων, και εν πλεονεξια τας εντολας κυριου διδαξετε, τας ὑπανδρους βεβηλωσετε, και παρθενους Ισραηλ μιανειτε, και πονηραις και μοιχαλισι συναφθησεσθε, θυγατερας εθνων ληψεσθε εις γυναικας, καθαρισοντες αυτας καθαρισμῳ παρανομῳ, και γενησεται ἡ μιξις ὑμων, ὡς ἡ Σοδομα και Γομορρα εν ασεβειᾳ. Test. Levi. s. 14. In this passage the εσθιειν μετα πορνων seems to designate the communion with aliens, probably with an especial reference to the participation of the idolatrous feasts: it is distinct from the seduction of Jewish virgins, from adultery, and from the pollution of the seed by alien marriages[ε]. The word is distinctly paraphrased in Test. Levi, s. 9. Λαβε ουν σεαυτῳ γυναικα ετι νεος ων, μη εχουσαν μωμον, μητε βεβηλωμενην. μητε απο γενους αλλοφυλων η εθνων, of which the last words are a manifest allusion to the legal prohibition of the marriage of a priest with a πορνη. So Judah, Test. Jud. s. 13. describes Thamar as sitting in sacred prostitution, εν πορνειᾳ, and calls her τελισκομενη or τελωνουμενη.

ε Compare the Psalterium Salomonis, an Hellenistic work of doubtful age, in which it is said, Ps. ii. 12. that God εστησιν τους υἱους Ισραηλ εις εμπαιγμον αντι ΠΟΡΝΟΥ εν αυτῃ, and it is added, ver. 14, 15. θυγατερες Ιερουσαλημ βεβηλοι κατα το πριμα σου, ανθ' ὡν ανται εμιαναν ἑαυτας εν φυρμῳ ανομιξιως. Cod. Pseud. V. T. v. i.

He also laments his own offence; το πνευμα της πορνειας παρεταξατο εν εμοι, εως συνεπεσα εις Βησουε την Χαναναιαν, και εις Θαμαρ την νυμφευθεισαν τοις υἱοις μου. In respect of the former he was overcome with wine, και ερασθεὶς αυτης συνεπεσα και παρεβην εντολην Κυριου και εντολην πατερων μου και ελαβον αυτην εις γυναικα. In Test. Dan. s. 5. it is foretold; ὡς αν αποστητε απο Κυριου, εν παση κακια πορευεσθε, ποιουντες βδελυγματα εθνων, εκπορνευοντες εν γυναιξιν ανομων, και εν παση πονηρια ενεργουντων εν ὑμιν των πνευματων της πλανης. Ανεγνων γαρ εν βιβλιῳ Ενωχ του δικαιου, ὁτι ὁ αρχων ὑμων εστιν ὁ Σατανας και ὁτι παντα τα πνευματα τα της πορνειας και της ὑπερηφανειας τῳ Λευι ὑπακουσονται, του παρεδρευειν τοις υἱοις Λευι, του ποιειν αυτους ἁμαρτανειν ενωπιον Κυριου. In the last day the Lord will judge εν τοις εκλεκτοις των εθνων τον Ισραηλ, ὡσπερ ηλεγξε τον Ησαυ εν τοις Μαδιηναιοις, τοις απατησασιν αυτον αδελφον αυτων γενεσθαι δια της πορνειας και ειδωλολατρειας. Test. Benj. s. 10. These and many other texts which might be recited, and in which the word is used as synonymous with πλανη, leave no doubt that the Hellenistic meaning of the word is retained in this apocryphal record, notwithstanding the many instances in which the word may be interpreted with some qualification in its ordinary sense. It is suspected that the work has been interpolated by a later writer: may not one of these interpolations be found in the aphorism? ὁ εχων διανοιαν καθαραν εν αγαπη ουκ ὁρᾳ γυναικα εις πορνειαν. The allusion to Matt. v. 28. may be thought too obvious to be denied: but if the text be genuine, it is not necessary to suppose that πορνεια and μοιχεια are convertible terms, or that πορνεια signifies any thing more than πλανη, or error[h]. It is very probably in the same sense that Joseph, Test. Jos. s. 3. says that the Egyptian woman εσχατον εις πορνειαν με εφελκυσατο. The passage is corrupt, and it is otherwise

[h] The text is very probably an interpolation in the inaccurate language of the third century. So Origen, De Rect. in Deum Fide, s. 2. says, in allusion to the same text, τινι προσταττει μοιχευειν, ὁς γε και το μονον ἰδιον προς επιθυμιαν, ὡς πορνειαν απειρηκε: Again, Select. in Exod. ἱεριως θυγατηρ, εαν μοιχευθῃ, alluding to the law, Lev. xxi. 9. where it is written, εαν βεβηλωθῃ του εκπορνευσαι.

read, that Joseph was ignorant, ὁτι εις πορνειαν με εφελκυετο, and it is afterwards added in the Latin text, that he was grieved for many days, "quia cognovi dolum ejus et *errorem*. With this addition, the word may be explained by *error*, and under no interpretation can it relate to more than the meditated crime. Actual adultery is expressed by the usual phrase. Joseph, Test. s. 4. says that the Deity has no pleasure εν τοις μοιχευουσιν, and the woman makes her proposition ει μοιχευσαι ου θελεις, εγω αναιρω τον Αιγυπτιον και ούτως νομφ ληψομαι σε εις ανδρα. In Test. Aser. s. 3. the words are distinguished: αλλος μοιχευει, πορνευει και απεχεται εδεσματων, κ. τ. λ.

From these remains of Hellenistic writers, who are supposed to have been contemporary with our Lord, and had been brought up in the use of the same idiom and phraseology as the apostles and evangelists, it is proper to proceed to the uninspired writers of the Christian Church, and to trace, in the relics of Christian antiquity, the progressive alterations in the sense of the word πορνεια, and the interpretation which has been thus superinduced on the clause of exception in our Lord's law of divorce.

In the large collection of apocryphal and supposititious writings, which claim to be the works of apostolic men, but which the best critics have assigned to a very different period, the evidence is varied as the writers were more or less familiar with the Jewish idiom and phraseology. In some of these compositions the words are not used, nor was there any occasion which required their use. The argument from the disuse of the words can only be collected from passages in which they might be expected to occur.

In the Acts of Paul and Thecla, ascribed by Grabe to the apostolic age, and considered by Jones, on the authority of Tertullian, to be the work of a presbyter of Asia, interpolated in its fabulous narratives, the words are not used. Paul is made to teach that there is no resurrection, εαν μη αγνοι μενειτε, μηδε την σαρκα ύμων μολυνετε, c. 11. and that he

was sent ὁπως απο της φθορας και της ακαθαρσιας αποσπασω αυτους και πασης ηδονης τε και θανατου, c. 14. The attempts of certain ανδρες ατακτοι upon the chastity of Thecla are described by the terms φθειραι και μιαναι αυτην . . συγκαθευδησαι αυτῃ . . δρασαι ατοπον . . καθυβρισαι αυτην . . ενυβρισαι την παρθενιαν, c. 29. This is but negative evidence: but if πορνεια had in the apprehension of this writer borne the sense which has since been ascribed to it, and been of as definite signification as μοιχεια, there was certainly here an occasion for its use, and it would hardly have been omitted.

There is the same negative evidence in the Apocalypse of the primitive heretic Cerinthus, affirming of the millennium, επιθυμιαις και ηδοναις εν Ιερουσαλημ την σαρκα πολιτευομενην δουλευειν. Fabric. Cod. Apocr. N. T. p. 957. This periphrasis would have been unnecessary, if the πορνη, πορνευω and πορνεια, of the canonical and contemporary Apocalypse had been used in the ordinary sense of the words: their Hellenistic meaning with reference to the Antichrist is expressed by an old writer by the phrase πλανη αυτου.

In the Protevangelium, which Jones pronounces to be "the composure of some Jew or Hellenist," of a writer, as Fabricius interprets the words of Eustathius, "dubiæ incertæque autoritatis, utut propter antiquitatem non plane contemnendi," none of the words occur, but their place is supplied by other words in the reasoning of Joseph and the judgment of the council on the state of Mary. When Joseph found την παρθενον ογκουμενην, he asked, τις το πονηρον τουτο εποιησεν εν τῳ οικῳ μου και ηχμαλωτευσε την παρθενον και εμιανεν αυτην; and he demanded of Mary, τι εταπεινωσας την ψυχην σου; ποθεν εστι το εγγαστριον σου; s. 13. He was therefore in doubt, whether he should conceal το ἁμαρτημα αυτης. s. 14. The High Priest, supposing that Joseph had anticipated the marriage, pronounces that he ηνομισε σφοδρα· την γαρ παρθενον, ἡν παρελαβεν εκ ναου Κυριου, εμιανεν αυτην και εκλεψε τους γαμους, και ουκ εφανερωσε τοις υἱοις Ισραηλ. He enquires of Mary, τι εταπεινωσας την ψυχην σου και επελαθου Κυριου του Θεου σου; and he proceeds to rebuke Joseph;

εκλεψας τους γαμους αυτης, και ουκ εφανερωσας τοις υἱοις Ισραηλ· ουκ εκλινας την κεφαλην σου ὑπο χραταιαν χειρα, ὁπερ ευλογηθῃ το σπερμα σου. s. 15. If the writer of the Protevangelion had been acquainted with the use of πορνευω to denote that indiscriminate intercourse of the sexes, whether in or out of marriage, which later writers have attached to the word, he would naturally have applied it to the case of Joseph and Mary: and the disuse, the omission, or evasion of the word will appear the more remarkable, if the language of the Protevangelion be compared with that of the corresponding Evangelium de Nativitate Mariæ, ascribed to Saint Matthew, and extant only in a Latin translation by Jerome of the fourth century. The translation is called by Fabricius, interpretatio liberior, as were all the versions of that age, and it is vain to conjecture what were the original terms. In the version of Jerome; Joseph neque eam traducere voluit, quia justus erat, neque fornicationis suspicione infamare quia pius: and he was warned by the angel; noli timere, hoc est, ne velis fornicationis suspicionem in virgine habere. s. 10. There is another example of the similar use of the word *fornicatio* in the Gospel of Nicodemus, assigned by Jones to the end of the third century, in which the unbelieving Jews are made to affirm that our Lord was born *ex fornicatione*, a charge which his disciples deny: nos non dicimus eum esse natum *ex fornicatione:* hic sermo vester non est verus, quoniam desponsatio facta est, sicut ipsi dicunt, qui sunt ex gente vestrâ. s. 2. This charge is again and again repeated and denied in a manner which betrays the most extreme ignorance of the history, or some misapprehension of the term, which may have crept into it in the lapse of two centuries and a half. The Jews appear to have understood the word, as it is explained by Whitby in reference to the clause of exception, of seduction before marriage; and the disciples repel the charge by insisting on the fact of the espousals. Fabricius has justly remarked upon this daring forgery; "Nullo testimonio fide digno constat, hanc

calumniam unquam objectam fuisse, vel Christo a Judæis, cum in terrâ versaretur, vel apostolis, ut tanto magis appareat Judæorum recentium malitia."

In the undoubted epistles of the three apostolical fathers, Clemens of Rome, Ignatius, and Polycarp, and also in the larger epistles of Ignatius, there is an entire disuse of the words πορνευω and εκπορνευω. The word πορνη occurs only in the epistle of Clemens, who, in speaking of Rahab ἡ πορνη, c. 12. approves her hospitality, and recommends it to imitation, without offering the faintest imputation upon her chastity. Ουτε πορνοι occurs as a quotation of 1 Cor. vi. 9. in the epistle of Polycarp and in the larger epistle of Ignatius ad Trall. c. 9. The word πορνεια is entirely omitted, although it might have been naturally expected in the following catalogue of crime: φευγοντες καταλαλιας μιαρας τε και αναγνους συμπλοκας, μεθας τε και νεωτερισμους και βδελυκτας επιθυμιας, μυσεραν μοιχειαν, βδελυκτην ὑπερηφανιαν. Clem. R. Ep. i. ad Cor. c. 30.

In the larger epistles of Ignatius, Ad Magnesios, c. 9. as also in the supposititious epistle of Mary to Ignatius, c. 3. the word πορνη is omitted in the direct reference made to the case of the πορναι γυναικες, which was adjudged by Solomon. The Antiochians are warned, c. 11. ἱνα μη ῥεμβος γενηται και πορνοκοπος, and in a fragment preserved by Grabe, Spicil. v. i. p. 24. τοις νεωτεροις επιτρεπε γαμειν, πριν η διαφθαρωσιν εις γυναικας. The Philadelphians, c. 6. are warned of apostates, who call φθοραν δε και μολυσμον την νομιμην μιξιν και την των παιδων γενεσιν, and who consider τας παρανομας μιξεις αγαθον τι, but there is still no mention of πορνεια, which in the sense of an irregular or unlawful marriage was a παρανομος μιξις. In the Ep. ad Philipp. c. 2. the evil spirit is addressed by the name of πορνειας πνευμα, the spirit of error and apostacy, the πνευμα πλανης or ὁ της πορνειας αρχων, as he is called in the most ancient apocryphal writings. In this sense it is the eloquent expostulation of Ignatius; τι δε κακιζεις την φυσιν της παρθενου, και τα μορια αποκαλεις αισχρα; παλαι ταυτα πομπευων, και γυμνουσθαι κελευων ἀῤῥενας μεν εις

οψιν θηλειων, θηλειας δε εις ακολαστον επιθυμιαν αρρενων; νυν αισχρα σοι ταυτα νενομισται και σεμνος ειναι προσποιη, συ το της πορνειας πνευμα, αγνοων, ὁτι τοτε γινεται αισχρον τι, ὁταν παρανομια ρυπανθη· ἁμαρτιας δε απουσης, ουδεν των γενομενων αισχρον, ουδεν φαυλον, αλλα παντα καλα λιαν. Thus πορνεια is used in the sense of falsehood and error: its ordinary sense is supplied by other words, as ακολαστος επιθυμια.

From these examples of the use and disuse of the word in the authentic writings of the apostolic age, it is certain that there is no primitive authority which circumscribes the meaning of the word, that in the interval of its suspended use its original sense may have been overlooked, and its progressive and indiscriminate misapplication may be exhibited by contrasting the supposititious with the genuine writings of the apostolic Clemens.

In the Apostolical Canons, as they are called, which exhibit the discipline of the Oriental Church in the second and third centuries, and were first appealed to in the council of Constantinople, A. D. 394, the word πορνευω does not occur. In rules evidently deduced from the Levitical law concerning the marriage of the priest, παλλακη and ἑταιρη occupy the place of πορνη. The distinction between πορνεια and μοιχεια is retained in Canon LIII. ει τις κατηγορια κατα πιστου πορνειας η μοιχειας η αλλης τινος απηγορευμενης πραξεως, και ελεγχθη, εις κληρον μη προαγεσθω. In other passages the word πορνεια is used very indefinitely. In Canon XVIII. the clerk is to be deposed ὁ πορνειᾳ, η επιορκιᾳ η κλοπη αλους. In the titles of the Canons published ex Balsamone from a MS. by Cotelerius, Can. XXV. is entitled, περι των επι πορνειᾳ αλουντων ἱερωμενων. Can. LXI. περι του εις κληρον μη προαγεσθαι τους απελεγχθεντας επι πορνειᾳ.

In the Apostolical Constitutions, which have certainly no claim to the antiquity which they assume, the words πορνευω, &c. occur frequently, and in very different senses. Πορνευω is opposed to lawful marriage, and it is prescribed in respect of servants: l. viii. c. 32. ει δ' αγαμοι εισι, μανθανετωσαν μη πορνευειν, αλλα γαμειν νομῳ· ει δ' ὁ δεσποτης αυτου (of

the servant) πιστος ων και ειδως, ότι πορνευει, ου διδωσιν αυτῳ γυναικα, η τῃ γυναικι ανδρα, αποβαλλεσθω. The same Constitution contains the rule of the παλλακη, see Coteler. not. ad loc. παλλακη τινος απιστου δουλη, εκεινῳ μονῳ σχολαζουσα, προσδεχεσθω· ει δε προς αλλους ασελγαινει, (not πορνευει,) αποβαλλεσθω· πιστος εαν εχῃ παλλακην, ει μεν δουλην, παυσασθω, και νομῳ γαμειτω· ει δε ελευθεραν, εκγαμειτω αυτην νομῳ· ειδε μη, αποβαλλεσθω. One and the same rule is delivered in respect of the πορνοβοσκος, the πορνη, and the ειδωλοποιος. Ει τις πορνοβοσκος, η παυσασθω του μαστροπευειν, η αποβαλλεσθω· πορνη προσιασα η παυσασθω η αποβαλλεσθω· ειδωλοποιος προσιων η παυσασθω η αποβαλλεσθω. Πορνευω is also distinguished from μοιχευω, l. vii. c. 2. ου μοιχευσεις . . ου παιδοφθορησεις . . ου πορνευσεις· ουκ εσται γαρ, φησι, πορνευων εν υἱοις Ισραηλ, for in this mistaken sense is the text more than once recited. The word however had not entirely lost its proper sense of *apostacy*, as appears from the writer's reference to the sacred history: l. i. c. 6. όσοι δε βασιλεις εξεπορνευσαν απο Θεου, εν αποστασιᾳ αυτων συντομως απωλοντο. It is also used to describe the doctrine or the practice of the Nicolaitans and other heretics of the second century: l. vi. c. 8, 10. οἱ δε αναιδην εκπορνευουσιν, οἱοι οἱ νυν Νικολαϊται, and in this use it is equivalent to παραχρασθαι τῃ σαρκι, and may refer to their indiscriminate views of marriage.—The word πορνος is distinguished from μοιχος, l. iv. c. 6. φευκταιοι δ' αυτῳ και πορνοι, και ἁρπαγες, και των αλλοτριων επιθυμηται, και μοιχοι.— The word πορνη is used in its ordinary sense, l. viii. c. 32. and with more or less marks of being a quotation, l. ii. c. 41. iii. 8. iv. 6, 7. The unusual word πορνοκοπος, Cf. Pr. xxiii. 21. occurs l. ii. c. 4. iv. 11. The word πορνικος is also used in the same sense as in Proverbs, and is probably a quotation, in describing the woman who has the ειδος πορνικον, l. i. c. 7. but it is also synonymous with εθνικος, l. x. c. 10, 11, 12. The Christian ουδε ωδην εθνικην οφειλει λεγειν, ουδε ασμα πορνικον, επει συμβησεται αυτῳ δια της ωδης ειδωλων μνημονευειν ονοματα δαιμονικα. The title of the Constitution in one Vienna MS. requires Christians to avoid

οργην αμετρον, μωρολογιαν, ωδην εθνικην, ονομασιαν ειδωλων και δαιμονων. The following chapter requires him to avoid της ειδωλολατρειας το μυσος, and appears to be connected with c. 10. The title of c. 12. is ὁτι μη καθηκει ᾠδην εθνικην και πορνικην αδειν, ουδε επομνυσθαι ειδωλων, in which the Vienna MS. again omits the words και πορνικην, and gives room to suspect that they are synonymous and redundant, included under the word εθνικην, which sufficiently denotes the song that was sung in the heathen and idolatrous processions. The distinction between the principal word πορνεια and μοιχεια, may not only be inferred from the juxta-position of the two words μοιχειαι, πορνειαι, l. vi. c. 27, 28. vii. 18. but it is defined in an argument on their distinct nature. l. vi. c. 28. Marriage, in the spirit of the age, is recommended as the means of preventing πορνεια, in whatever sense the term is used: and parents are exhorted, in respect of their children, μετα ὁμηλικων εις συμποσιον μη εωντες αυτα συμβαλλειν, ούτω γαρ εις αταξιαν εκτραπησονται και εις πορνειαν περικεσουνται . . . ει γαρ τη των γειναμενων ραθυμια συνεισιν ακολαστοις, οἱ παιδες ἁμαρτησαντες ουκ αυτοι μονοι κολασθησονται, αλλα και ὑπερ αυτων οἱ γονεις αυτων κριθησονται· δια τουτο σπουδαζετε ὡρα γαμου ζευγνυναι και συναλλασσειν αυτα, ἱνα μη της ηλικιας εν ακμη ζεουσης εθη πορνοκοπα αποβη. l. iv. c. 11. A third marriage is called προφανης πορνεια. l. iii. c. 2.

In the Recognitions of Clemens, which is extant only in a Latin translation, there is little worthy of notice which may not be found in the Clementina, the Homilies, and the Epitome of the Acts of Peter. In a brief passage of the original preserved by Cæsarius, l. ix. c. 17. κοινουσθαι and συγκαθευδειν express the ordinary sense of πορνευειν. The translator Ruffinus observes the distinction between adulterium and scortum, meretrix and adultera, l. ix. c. 19. and he may have expressed the true sense of πορνεια or of its ancient synonyme πλανη, when he calls the early idolatries, *erraticæ* religiones, *erraticæ* superstitiones, *erratici* cultus, l. iv. c. 13, 14, 29. In a passage which has perplexed the commentators, l. ii. c. 31. Haran, Gen. xi. 28.

whose death is ascribed by other fathers to *idolatry*, is said to have died "ob *incesti* crimen." Was the original word πορνεια, which Ruffinus misapprehended or hesitated to express; and which in his time was losing its ancient sense? It is not improbable that he also adverts to the word in the sense of alien marriage, in amplifying the matrimonial alienation of the sons of God; l. ii. c. 39. Homines justi, qui angelorum vixerunt vitam, illecti pulchritudine mulierum *ad promiscuos et illicitos concubitus declinaverunt* et inde jam *indiscrete et contra ordinem* cuncta gerentes, statum rerum humanarum et divinitus traditæ vitæ ordinem permutarunt. This was the ἡ πορνεια of the apocryphal Enoch: was it also the indiscreta, the indiscriminate intercourse of the second century?

In the Clementina πορνεια bears the sense of passion, or ορεξις, as it is called in the parallel passage, Hom. iii. c. 68. It is also opposed to σωφροσυνη, and distinguished from μοιχεια, being by a very unusual arrangement made the genus, of which μοιχεια is the species: πορνειας ειδη πολλα, πλην πρωτη μοιχεια εστιν.

In the Homilies πορνευω occurs in a sense distinct from μοιχευομαι, H. iii. c. 68. and in a sense very indefinite, which may be appropriated with the same facility to apostacy and prostitution: δυναται και πτωχος . . . και πραττειν ὁ προηγουμενῳ ου χρη· η γαρ ειδωλα σεβει, η βλασφημει, η πορνευει, η αδιαφορως ζη, η επιορκων, η ψευδομενος, η απιστως βιους. H. xv. c. 10. The word πορνων is interpolated in an allusion to the case of the unfaithful servant, Luke xii. 45. beating his fellow-servants εσθιων και πινων μετα πορνων και μεθυοντων, q. d. aliens or apostates. Although the principal word πορνεια is omitted in such catalogues of crime as πατροφονιας, τεκτοκτονιας, μιξεις ασεβεις μητερων, θυγατερων, αδελφων· μοιχειας απρεπεις, και αῤῥενομιξεις και μιαρας αῤῥητουργιας προς αλλαις μυριαις τοιαυταις αθεμιταις μιξεσιν, H. vi. c. 18. although in various allusions to the apostolic decree the word is suppressed, and its place, as if it were an unintelligible term, is supplied by εκ παντος απολυεσθαι λυματος,

H. vii. c. 4. μη ακαθαρτως βιουν, c. 8. and although with especial reference to the sons of God, the phrases γυναικων μιξις, or νοθος μιξις, H. viii. c. 13, 15. are substituted for the more ancient word πορνεια, the word is nevertheless used in its ordinary sense, πορνειων, ασελγειων, πλεονεξιας και πασης βλασφημιας, H. xi. c. 8. more equivocally αφοβια, απιστια, πορνεια, H. i. c. 18. and Epit. but distinct from adultery, μη πως ζεουσα ἡ ορεξις πραφασει πορνειας η μοιχειας λοιμον προσενεγκοι τῃ εκκλησια. H. iii. c. 68. In one instance it is said to Matthidia, a married woman, who had resisted an attempt upon her virtue, πορνειᾳ σωμα σου ουκ εμιανας. H. xiii. c. 20. The attempt was however made by her husband's brother, and the word may bear the sense of incest, as 1 Cor. v. 1. If it be understood of adultery, it proves the corrupted use of the word at the time.

In the Epit. de gestis Petri, c. 165. and in the Martyr. S. Clem. Venus is called πορνη.

This diffuse and indiscriminate use of the word πορνεια affords a powerful test for distinguishing the supposititious from the genuine writings of the apostolic Clemens, and it marks the progress in the misapprehension of the word, which eventually obtained in the writings of the third and fourth centuries, compared with those of an earlier period.

In the Epistle of Barnabas, which is admitted to be the work of some Jew who lived in the first century, there is an entire omission of the words πορνη and πορνεια. Μοιχεια is used as a proper and specific term, distinct from the word substituted for πορνεια. Ου μη γενῃ μοιχος, ουδε φθορευς, ουδε ὁμοιωθησῃ τοις τοιουτοις. s. 10. ου πορνευσεις, ου μοιχευσεις, ου παιδοφθορευσεις. s. 19. Thus πορνευω is either redundant or distinct from μοιχευω, παιδοφθορευω και τοις τοιουτοις.

Of the Shepherd of Hermas there are but few fragments extant, except in a Latin translation, of which the freedom sufficiently appears upon comparison with the remaining fragments of the original work, of which the following passage is preserved: φυλασσε την αγνειαν και μη αναμενετω

επι την καρδιαν σου περι γυναικος αλλοτριας, η περι πορνειας τινος, η περι τοιουτων ονοματων . . . τουτο γαρ ποιων, ἁμαρτιαν μεγαλην εργαζῃ· βλεπε ουν, απεχου απο της ενθυμησεως ταυτης. L. i. Mand. 4. This is probably the first occasion upon which the word πορνεια is used by any uninspired Christian writer; and if the αλλοτρια γυνη or matrimonium alienum denote another man's wife, or adultery, πορνεια is distinguished from that offence: or if it be equivalent to the αλλοτρια γυνη of the LXX, the rule corresponds with the precept of Tobit, iv. 13. The distinction is preserved in another mandate: εγκρατευσαι απο μοιχειας, πορνειας . . . επιθυμιας πονηρας . . . και ὁσα τοιουτοις ὁμοια εστιν.

There is another passage, unhappily extant only in the Latin translation, which is of the first importance in ascertaining the sense of the word πορνεια, and which, without reciting the clause of exception in the law of divorce, throws a strong light on its meaning and intent: "Et dixi illi; Domine, permitte me pauca verba tecum loqui. Dic, inquit. Et dixi illi; Domine si quis habuerit uxorem fidelem in Domino et hanc invenerit in adulterio, numquid peccat vir, si convivit cum illâ? Et dixit mihi; Quamdiu nescit peccatum ejus, sine crimine est vir, vivens cum illâ: si autem scierit vir, uxorem suam deliquisse, et non egerit pœnitentiam mulier et permanet in fornicatione suâ, et convivit cum illâ vir, reus erit peccati ejus, et particeps mœchationis ejus. Et dixi illi; Quid ergo, si permanserit in vitio suo mulier? Et dixit; Dimittat illam vir et vir per se maneat. Quod si dimiserit mulierem suam et aliam duxerit et ipse mœchatur. Et dixi illi: Quid si mulier dimissa pœnitentiam egerit, et voluerit ad virum suum reverti: nonne recipietur a viro suo? Et dixit mihi; Imo si non receperit eam vir suus, peccat et magnum peccatum sibi admittit: sed debet recipere peccatricem, quæ pœnitentiam egit.—Propter pœnitentiam ergo non debet, dimissâ conjuge suâ, vir aliam ducere. Hic actus est similis in viro et in muliere. Non solum mœchatio est illis, qui carnem suam coinquinant, sed et is, qui simulachrum fecit,

mœchatur. Quod si in his factis perseverat et pœnitentiam non agit, recede ab illâ et noli convivere cum illâ; alioquin et tu particeps eris peccati ejus." L. i. Mand. 4.

It has been already remarked, that the principal question relates to the case of a man who has uxorem *fidelem* in Domino, whom he detects in *adulterio*. The question would have been unnecessary if the case had been resolved by our Lord: and hence it is concluded, that the clause of exception does in some sense not include the uxor *fidelis* detected in *adulterio*. The meaning of the passage must be ascertained, not by the ordinary sense of single words, but by a collation of the several parts of the context. The question concerns a believing woman detected in *adulterio*, and it is answered, that if this woman persists in *fornicatione* suâ, her husband, being privy to her offence, and consenting to live with her, becomes reus *peccati* ejus et particeps *mœchationis* ejus, and in this position, *adulterium*, *fornicatio*, *peccatum*, *mœchatio*, all represent the same offence. But it is not necessary to interpret either of the words of adultery properly so called: they are all used by Tertullian, a contemporary writer, to denote *apostacy*, and as translations of the word πορνεια. In this sense the words used by the translator of Hermas are afterwards explained: "Non solum," according to the received notion, "mœchatio est illis, qui carnem suam coinquinant, sed et," in the Christian sense principally and more especially "is qui simulachrum facit mœchatur. Quod si in his factis perseverat et pœnitentiam non agit, recede ab illâ et noli convivere cum illâ: alioquin et tu particeps eris peccati ejus: i. e. the man, qui invenerit uxorem fidelem in *adulterio* . . . qui scierit eam *deliquisse* et permanere in *fornicatione*, becomes partaker of her crime, unless he separates from her. Would he, by the doctrine of this primitive period, have been so contaminated by overlooking her adultery? Was such contamination received from the woman quæ carnem, suam coinquinat? or not rather from her, quæ simulachrum fecit et in his factis perseverat, who

abandons herself to idolatrous practices, and persists in them without repentance, and whose husband, unless he refuses to live with her, is implicated in her guilt, and tempted by her example to participate in her offence. Part of the passage is recited by Bingham, in proof that idolatry was among the primitive causes of divorce, which it could have justified only under the Hellenistic sense of the word πορνεια. Hermas takes no notice of the clause of exception: did he restrict it to the case of a believer having an unbelieving consort? He makes no reference to the apostle's doctrine, 1 Cor. vii. did he understand that doctrine of persons married before their conversion to the truth, confining his own question to that of a person having a believing consort, apostatizing after marriage? It is no objection to this interpretation, that the word mœchatur, in the passage concerning the marriage of the husband after an unlawful separation, is used in its ordinary sense: it is the very word used in the rule of our Lord; and examples of the proper and improper use of the word are but too common with the writers of this period, especially Tertullian; and the true meaning can only be ascertained by weighing the context, and referring, wherever it is possible, to the original.

The few remains of the heretical writings of the second century, as they are collected by Grabe, afford the clearest evidence of the proper use of the word μοιχος, of the general disuse of the word πορνεια in its ordinary sense, and of its use in the sense of apostacy. Thus Basilides, Frag. Com. Spicileg. v. i. p. 40. speaks of the adulterer and his design: ὡς ὁ μοιχος η ὁ φονευς. . . . Ὡς γαρ ὁ μοιχευσαι θελων μοιχος εστι, καν του μοιχευσαι μη επιτυχη.—Valentinus, Frag. Ep. Ibid. p. 50. uses another word for μοιχεια in its ordinary sense, ενυβριζοντων επιθυμιαις ου προσηκουσαις, and p. 56. he describes the adulterer by the periphrasis, ὁς του πλησιον γυναικα παιζειν ηθελε, ληστευων γαμον αλλοτριον και επι παρανομον κοιτην τραπηναι παρορμων. See also Epiphanes Hæret. de Justitia. Ibid. p. 62. and Isid. Hæret. Frag. Mor. Ibid.

p. 65. Heracleon, Comm. in Ev. S. Johan. in a mystical exposition of the woman of Samaria and her six husbands, uses πορνευω in the sense of religious apostacy: ἑρμηνευει γε την ὑλικην πασαν κακιαν δηλουσθαι δια των ἐξ ανδρων, ἡ συνεπλεκετο και επλησιαζεν παρα λογον πορνευουσα και ενυβριζομενη, και αθετουμενη και εγκαταλειπομενη ὑπ' αυτων. Λεκτεον δε προς αυτον, ὁτι, ειπερ επορνευεν ἡ πνευματικη, ημαρτανεν ἡ πνευματικη· ει δε ημαρτανε πνευματικη, δενδρον αγαθον ουκ ην ἡ πνευματικη. Ibid. p. 97. Here are the text of the second and the comment of the third century; Heracleon using πορνευουσα in the sense of separation, and Origen pronouncing επορνευεν to be equivalent to ημαρτανε. Again; the Samaritan woman, according to Heracleon, explains the reason δι' ἡν εξεπορνευσεν, the reasons of her religious apostacy, namely, ὁτι διανοιαν, or rather, ατε δι' αγνοιαν Θεου και της κατα τον Θεον λατρειας αμελησασαν . . προστιθησι δε τουτοις, ὁτι βουλομενη μαθειν, πως και τινι τροπῳ ευαρεστησασα και Θεῳ προσκυνησασα απαλλαγειη του πορνευειν. p. 98. The last words are repeated, and it is plain from them that the woman erred or *apostatized* through ignorance of God and his worship, and that she had hope, that by adoring him she should be delivered from her alienation, Θεῳ προσκυνησασα απαλλαγειη του πορνευειν, evidently opposing the *devotion* to the *apostacy*. This exposition is confirmed by the remark of Origen, explaining πεπορνευκεναι by εκπεπτωκοτας. ούς και βραχεως ειπεν ὁ Ἡρακλεων εκπεπτωκοτας, την Σαμαρειτιν λεγων πνευματικης φυσεως ουσαν πεπορνευκεναι. p. 101.

A considerable portion of the writings which remain to be examined, are the works of men who had studied deeply in the schools of the heathen, and were occupied in the refutation of the errors of the heathen philosophy and mythology; and it is not therefore wonderful that they should depart from the style of their Hellenistic predecessors, and fall into that of the classical writers. It may nevertheless be observed, that among the writers of the second century the words in question are but slowly introduced; that they very rarely occur in the pointed descrip-

tions of the varied licentiousness of the heathen divinities; and that but few texts are recited from the LXX, in which the words are used. With these reservations it may be freely conceded, that the words are found in their classical sense; and it will only be necessary to shew, that in their more general use they do not mean adultery, but something distinct from adultery, something equivalent to all the accumulated abominations and the uncovenanted guilt of the idolatrous state, which, in connexion with the vice implied in the classical use of the word, eventually produced the large and comprehensive signification of πορνεια, and widened in proportion the law of divorce.

Justin Martyr, in adverting to the passages in which the word πορνευω is used by the LXX, either omits the word, as in quoting Deut. xxxi. 16—18. Dial. c. Tryph. c. 74. or substitutes another word for it, as in alluding to the law of the phylacteries, which were ordained for the prevention of apostacy, and the maintenance of religious obedience: ου διαστραφησεσθε οπισω των διανοιων ύμων και των οφθαλμων, εν οις ύμεις εκπορνευετε οπισω αυτων και όπως αν μνησθητε και ποιησετε πασας τας εντολας μου και εσεσθε άγιοι τω θεω ύμων. Num. xv. 39. Justin M. affirms that the provision was inefficient, ουδε μικραν μνημην εχετε του θεοσεβειν, και ουδ' ούτως επεισθητε μη ειδωλολατρειν. D. c. Try. s. 46. On the transgression with the daughters of Moab he says, και προς τας θυγατερας των αλλογενων πορνευσαι και ειδωλολατρευσαι εσπουδασατε. Ibid. s. 132. and upon another occasion he describes the people as being always ευκαταφοροι και ευχερεις προς το αφισταθαι της γνωσεως αυτου. Ibid. s. 20. For the common expression πορνευσαι και ειδωλοθυτα φαγειν, he uses μητε ειδωλολατρησαι και ειδωλοθυτα φαγειν. Ibid. c. 34. These are sufficient proofs of the sense in which Justin M. understood the word πορνευσαι; and of the manner in which he thought it necessary to explain it. There is one occasion upon which he uses it with a peculiarity engrafted on the ordinary sense, with reference to the polygamy of the patriarchs: ουχ ώς πορνευοντες πολλας εσχον γυναικας οι πατρι-

αρχαι. Ibid. c. 141. The ουχ ὡς πορνευοντες is equivalent to αγομεναι ονοματι γαμου γυναικας, the marriage of the Jews with the concubines, a sort of illegal and dissoluble marriage, and in contrast with ουχ ὡς πορνευοντες is put αλλ' οικονομια τις και μυστηρια παντα δι' αυτων απετελειτο. The word πορνος is distinguished from μοιχος, Apol. ii. s. 2. μητε μοιχον μητε πορνον, and it is used in the sense of alien, and in reference to Luke vi. 32, 33, is substituted for ἁμαρτωλοι=the Gentiles: και γαρ οἱ πορνοι τουτο ποιουσιν. Apol. i. s. 15. So, in an argument on the conversion of the Gentiles, and with allusion to the scarlet thread given to Rahab τῃ πορνῃ by the spies, he calls it a sign of the blood of Christ, δι' ού παλαι πορνοι και αδικοι εκ παντων των εθνων σωζονται, αφεσιν ἁμαρτιων λαβοντες και μηκετι ἁμαρτανοντες. These expressions are more adapted to the general apostacy of the Gentiles, and their exclusion from the covenant of God, than to any of their particular offences. The same salvation is described in other terms; οἱ εκ παντων των εθνων εις θεοσεβειαν ετραπησαν απο των ματαιων ειδωλων και δαιμονων, or, more ambiguously, οἱτινες εν πορνειαις και ἁπλως πασῃ ῥυπαρᾳ πραξει ὑπαρχοντες, or, τα ῥυπαρα ἱματια, τουτεστι τας ἁμαρτιας, ημφιεσμενοι. The ambiguity is however removed in respect of Joshua, who ῥυπαρα ἱματια εφανη φορων δια το γυναικα πορνην λελεχθαι ειληφεναι, and by the exposition of the ῥυπαρα ἱματια, which are connected with the πορνειαι of the sins of the alien state. D. c. Tr. c. 116. The supposed marriage of Joshua to Rahab τῃ πορνῃ was a sign of the conversion of the πορνοι or Gentiles. Πορνης is quoted from Isa. lvii. 3. σπερμα και τεκνα πορνης. Πορνεια is not only distinguished from μοιχεια, as, ὁτι μοιχεια κακον και πορνεια και ανδροφονια και ὁσα αλλα τοιαυτα. D. c. Tr. c. 93. but it is also used in the sense of idolatrous apostacy. In describing the power of demons before their conversion, it is said, that the Gentiles had separated themselves from them: ὁν τροπον και ἡμεις μετα το τῳ λογῳ πεισθηναι εκεινων μεν απεστημεν· Θεῳ δε μονῳ αγγεννητῳ δια του υἱου επομεθα, οἱ παλαι μεν πορνειαις χαιροντες, νυν δε σωφροσυνην μονην ασπαζομενοι·

οἱ δε και μαγικαις τεχναις χρωμενοι, κ. τ. λ. Ap. i. c. 14. To remove the ambiguity of this expression, and to prove its reference to the *alien state*, it should be compared with the passage already recited from D. c. Try. c. 116. and with his manner of introducing the words of the prophet Jeremiah: Οὐ περι εθνων αλλοφυλων φησιν, αλλα περι του συμφωνουντος τοις εθνεσιν κατα το ειρημενον ὑπο Ιερεμιου . . . εκει διαλυθησομαι εν τῃ πορνειᾳ μου: understanding πορνεια of a personal act or state of apostacy. Apud Grabe, Spicileg. v. ii. p. 175.

Theophilus of Antioch, in describing the various apostacies under the judges, calls the people παραβαντας απο των εντολων του Θεου, Ad Aut. l. iii. s. 24. and in consequence πταισαντων αυτων, αλλοφυλοι εκρατησαν. Ibid. He makes the distinction μοιχος, πορνος, Ibid. l. i. s. 2. and again, απεχεσθαι απο της αθεμιτου ειδωλολατρειας και μοιχειας, και φονου . . πορνειας και πασης ασελγειας και ακαθαρσιας. Ibid. l. ii. s. 34. Cf. l. iii. s. 3. He is the first writer who recites the clause of exception: ὁς απολυει γυναικα παρεκτος λογου πορνειας ποιει αυτην μοιχευθηναι: upon which he offers no comment, but he immediately subjoins the text: Pr. vi. 29. ὁ εισπορευομενος προς γυναικα ὑπανδρον ουκ αθωωθησεται. The words thus annexed relate to the woman divorced παρεκτος λογου πορνειας, who, notwithstanding the pretended divorce, was ὑπανδρος. Was the woman divorced justly, and λογῳ πορνειας, therefore not ὑπανδρος, not so married but that she might be divorced without offence?

Tatian calls Helen την εκπορνευσασαν, c. Gr. s. 10. does he mean that she parted from her husband? He is himself charged as a heretic, γαμον τε φθοραν και πορνειαν παραπλησιως Μαρκιωνι και Σατουρνιλω αναγορευσας. Grabe, Spicil. v. ii. p. 249. Did he elevate πορνεια into marriage, or degrade marriage into πορνεια? See Ignat. ad Philad. s. 6. where the apostates are charged with calling φθοραν δε και μολυσμου την νομιμην μιξιν, και την παιδων γενεσιν. However the grammatical construction may require marriage to be the subject of which φθοραν δε και μολυσμον is the predicate, it is not

very consistent with the characteristic licentiousness of the Nicolaitans of the second century to charge την νομιμην μιξιν και την παιδων γενεσιν with φθοραν και μολυσμον. The same persons are accused of considering τας παρανομους μιξεις αγαθον τι, and if these παρανομοι μιξεις are understood literally of unions out of the received law of the Church, they will offend in calling the profane marriages, which the Church reputed no more than a φθορα or μολυσμος, a νομιμην μιξιν, and Tatian will act worthily of his party in denominating φθορα and πορνεια, or marriage out of the Church, γαμον, or approved marriage. The Apostolical Constitutions say of the Nicolaitans, οι δε αναιδην εκπορνευουσι, which, beyond the intention of the writer, using the language of an earlier age, may mean the promiscuousness of their marriages. The whole question is full of difficulties: see Mosheim, Eccl. Hist. and Hist. of Ch. before Constantine. And though it is very agreeable to the nature of this practical heresy, that its disciples should depart from the strict rule of the Church, and *contract marriage promiscuously* with believers and unbelievers, it is hardly possible that any man bearing the name of Christian should teach *indiscriminate debauchery*, and the charge may have been cherished by the misapprehension of a term gradually losing its original signification. The interpretation suggested in these pages gives consistency to the original prohibition, and the successive violations of the prohibition. The apostolic decree proscribes πορνεια in the sense of marriage with aliens. The apocalyptic Jezebel, following the example of Balaam, teaches Christians πορνευσαι, to marry indiscriminately. Tatian and the Nicolaitans revive the primitive error, and give the name of marriage to φθορα, μολυσμος, πορνεια, παρανομος μιξις.

Clemens of Alexandria not only uses all the words in their classical sense, but he uses them very frequently, and in all their variety of signification; he also applies different passages of Scripture, in which they are found, according to their classical use, and upon some occasions adopts them in

so large, so indefinite, and indiscriminate a manner, as might almost lead to the conclusion, that he confounds μοιχεια with πορνεια, or that at least he considers the former to be a branch of the latter. Thus: καταπαυσον, Ὁμηρε, την ωδην· μοιχειαν διδασκει· πορνευειν δε ἡμεις και τα ωτα παρῃτημεθα. Cohort. ad Gentes. Again the question is put with a plain reference to the clause of exception, but hardly in the sense which is here proposed: ει συγχωρει, καταγνωσθεισης επι πορνειᾳ γυναικος και εκβληθεισης, ἑτεραν γημαι. Strom. l. iii. s. 6. He nevertheless restricts the meaning of the word πορνεια, by observing on certain texts of Solomon, τεχνικως πανυ την παρθενον τῳ της πορνειας ενυβρισας ονοματι, αυθις επι την σεμνοτητα εντρεπων μετακαλειται. Pæd. l. i. c. 9. and he admits that other words were in more ordinary use: ὑβρις δε ἡ πολυωνυμος και πολυειδης, επειδαν εκτραπῃ κατα τουτο της αταξιας το μερος το κατα την αφροδιτην, λαγνεια λεγεται. Pæd. l. ii. c. 10. It is certain also that he uses μοιχεια in its ordinary sense, both plainly and figuratively, and with a certain distinction from μοιχεια. Thus ἡταιρηκεν ὑμων τα ωτα· πεπορνευκασιν οἱ οφθαλμοι· αἱ οψεις ὑμων μεμοιχευκασιν. Cohort. ad Gentes. ου πορνευσεις· ου μοιχευσεις· ου παιδοφθορευσεις. Pæd. l. ii. c. 10. ταις πορναις και τοις μοιχοις. Strom. l. iii. s. 4. It is also certain that he was acquainted with the use of the words to denote *apostacy*. His comment on ὁ εκ πορνης, Deut. xxiii. 2. has been already recited: and he himself affirms, πορνειας τρεις τας . . . διαφορας παρεστησαμεν· φιληδονιαν, φιλαργυριαν, ειδωλολατρειαν. Strom. l. vii. s. 12. and he ascribes this use of the word to the apostle: και ὁ γενναιος αποστολος ἐν τι των της πορνειας ειδων την ειδωλολατρειαν καλει. Strom. l. vi. c. 16. In this sense he may be supposed to combine ειδωλολατρευσαντες και εκπορνευσαντες, Pæd. l. i. c. 10. and to speak of the taste as being vitiated, εκπορνευουσης της γευσεως δια τινος κακοδαιμονος τεχνης. Pæd. l. ii. c. 1. He describes the apostacies under the kings by the words ἁμαρτανω and εξαμαρτανω. Strom. l. i. c. 20. After reciting 2 Cor. vi. 17, 18. on the separation and distinction of the people of God, he obviates the conclusion of the

heretics: ου των γεγαμηκοτων, ὡς φασιν (οἱ αἱρετικοι) αλλα των εθνων των εν πορνειᾳ (in the heathen or alien state) βιουντων· προς δε, και των προειρημενων αἱρεσεων αφορισθηναι, ὡς ακαθαρτων και αθεων, κελευει προφητικως ἡμας. Strom. l. iii. c. 11. He appropriates Rom. vii. 2. to Christ and his Church, which should be pure των τας αἱρεσεις μετιοντων και πορνευειν (to separate) απο του ἑνος ανδρος αναπειθοντων. Ib. c. 12. He explains 1 Cor. vi. 18. ὁ δε πορνευων εις το ιδιον σωμα in one place of second marriages, comparing the πορνεια with idolatry or πλεονεξια of marriage, or εκ του ἑνος γαμου εις τους πολλους εκπτωσις. Ibid. but in another passage he interprets σωμα of the Church, and πορνεια of apostacy, or a condition or act out of the divine covenant: σωμα δε αλληγορειται ἡ εκκλησια . . . ου τῃ πορνεια ουδε τῃ απο του ευαγγελιου αποστασει . . . πορνευει γαρ εις την εκκλησιαν και το αυτου σωμα . . . ὁ δε κολλωμενος τῃ πορνῃ, τῃ παρα διαθηκην ενεργειᾳ, αλλο σωμα γινεται, ουκ ἁγιον εις σαρκα μιαν και βιον εθνικον. Strom. l. vii. s. 14. There is also a comment upon 1 Cor. vi. 16. but it is not very perspicuous or precise: it shews however that πορνεια was marriage, and that Clemens did not understand the sense in which it was called marriage: ὁτι ου τον γαμον πορνειαν λεγει, επιφερει· Η ουκ οιδατε, ὁτι ὁ κολλωμενος τῃ πορνῃ ἑν σωμα εστιν; η πορνην τις ερει παρθενον πριν η γημαι; Strom. l. iii. c. 18. In a fragment of the Book de Nuptiis he understands πορνεια of an irregular marriage: παρθενων φθορα λεγεται ου μονον πορνεια, αλλα και ἡ προ καιρου εκδοσις· ὁταν, ὡς ειπειν, αωρος εκδοθῃ τῳ ανδρι, ητοι αφ' ἑαυτης η παρα των γονεων. The school of Clemens did not qualify him to denounce the unlawfulness of the intermarriage of the Jew with the Gentile; but the passages which have been recited may be of use in counteracting any authority which might otherwise be collected from his writings in favour of the indiscriminate interpretation of the words, and in proving their progressive misapprehension and more indiscriminate use.

In the brief remains of the original writings of Irenæus, the word πορνεια is only used in describing the error of Tatian. Adv. Hæres. l. i. c. 31. On other occasions the

word is disused, and its place is supplied by ενυβριζειν. ηχρειωσθαι. διαφθαρεισης. διαφθορα. διεφθειραν. The words fornicatio, &c. are used by the translator as quotations from the Scriptures, but without any comment to define or circumscribe their meaning. The πορνεια of the Apocalypse is called *apostasia*, in the course of which men were deluded dæmoniis et *apostaticis* spiritibus, in which was a confluence of all the virtus *apostatica*, and which comprehended in itself omnem malitiæ commentionem quæ facta est ex angelicâ *apostasiâ*. l. v. c. 27, 29. The fall of the angels, which in the Book of Enoch is called πορνεια, is called by Irenæus αποστασια. l. i. c. 4. While contemporary writers speak of the redemption of men from a state of πορνεια, and from the condition of πορνοι, Irenæus or his translator dwells on a redemption from a state of *apostasia*. l. iii. c. 5. v. c. 6. cum essemus in *apostasiâ*, l. iii. c. 8. fraude universâ et ab inspiratione *apostaticâ* et operatione dæmoniacâ et phantasmate idololatriæ per omnia repleti. l. ii. c. 56. The devil, whom other writers of the age call the αρχων πορνειας, is called by the translator of Irenæus princeps *apostasiæ*, l. ii. c. 36. servus *apostata*, l. iii. c. 8. and reference is made ei, qui princeps *apostasiæ* est, principi *abscessionis* et his angelis, qui *apostatæ* facti sunt cum eo. l. iii. c. 35. These are not inconsiderable proofs, that Irenæus held πορνεια to be equivalent to *apostasia*. Does he not also allude to 1 Cor. v. 11. when he says, that some men nec cum ipsis Ethnicis convesci vellent? Again; after a direct quotation of 1 Cor. vii. 5. ne tentet vos Satanas propter incontinentiam, he assumes, Si in Novo Testamento, quædam præcepta secundum ignoscentiam apostoli concedentes inveniuntur, propter quorundam incontinentiam, ut non obdurati tales in totum desperantes salutem suam *apostatæ* fiant a Deo: it may be asked, does he not allude, however improperly or inadequately, to the δια τας πορνειας of the apostle, 1 Cor. vii. 2? and the question is rendered the more reasonable, because in the process and conclusion of the argument he makes a very

explicit reference to the πορνευω of the LXX; affirming, that under the old covenant the Deity gives encouragement to men that detenti ab eo non revertantur ad idololatriam nec apostatæ fiant a Deo. l. iv. c. 29. He dwells upon several cases of the marriage of foreign or unbelieving wives; as of Hosea; of the unbelieving wife, 1 Cor. vii. Moses; and Rahab; considering them as proofs, not only of the sanctification of the individual stranger, but as types of the marriage of Christ to the Church, quæ est ex Gentibus; and of the sanctification of that Church. l. iv. c. 37. In commenting upon Matt. xix. 7, 8. he does not proceed to take any notice of the Christian law of divorce, except by representing our Lord, as Moysen quidem excusans, quasi fidelem servum; unum autem, qui ab initio masculum et fœminam fecit, Deum confitens; illos vero arguens tanquam duros et non subjectos et propter hoc aptum duritiæ eorum repudii præceptum a Moyse acceperunt. l. iv. c. 29.

The evidence from the writings of Tertullian is under all the circumstances as copious and satisfactory as may be expected. If it cannot be denied that he uses the several words, *fornicor*[1], *quæstuaria*, *prostituta*, *fornicaria*, *fornicator*, *stuprum*, *fornicatio*, *mœchia*, *adulterium*, as common and approved translations of πορνευω, πορνη, πορνος, and πορνεια, and in the sense of *simple whoredom;* and that he also uses the words *fornicatio*, *mœchia*, and *adulterium*, promiscuously for *idolatry*, (Quid enim tam proximum?) it is equally certain that he understands *fornicatio*, *stuprum*, and *adulterium*, to be proper and not figurative representatives of πορνεια in the sense of idolatry; and that

[1] It is by Tertullian (or by the old Italic version) that the words fornicor, &c. are first used. Were they derived from the Latin noun *fornix*, and adopted from their near resemblance to the Greek words πορνη, &c.? The translator of Irenæus says that the mistress of Simon Magus, Selenen, quæstuariam quandam . . . contumeliam sustinentem in *fornice* prostitisse. Adv. Hær. l. i. c. 19. It is remarkable that the English versions have retained the word *fornication*, and not ventured to introduce the less ambiguous *adultery* insisted on by the commentators.

he frequently marks, in their ordinary sense and use, the distinction between mœchia, μοιχεια, and fornicatio, πορνεια. De Pudicit. passim. It is the sense however in which he uses the word *adulterium* as the translation of πορνεια, which it is of the first importance to ascertain; and it is not improbable, that the received doctrine of divorce is principally founded on the prevailing misapprehension of the original use of that word. Tertullian's general notion of *adulterium* is, that it comprehends whatever is *false, corrupt, or contrary to Christian truth and discipline.* Thus in speaking of the idolater, he says, Proinde adulterium et stuprum in eodem recognoscas; nam qui falsis diis servit, sine dubio *adulter est veritatis*, quia *omne falsum adulterium* est. Sic et in stupro mergitur. Qui enim immundis spiritibus operatus, non conspurcatus et constupratus incedit? Atque adeo Scripturæ sanctæ *stupri vocabulo utuntur in idololatriæ exprobratione.* De Idol. s. 1. This is not a mere rhetorical expression, in aggravation of the offence which he condemns: it is his common and ordinary language. It is thus that he censures the men who nostram hanc novitiolam paraturam suis opinionibus ad philosophicas sententias *adulteraverunt:* and it is thus also that he speaks of the *adulteria* salutaris disciplinæ; Adv. Gen. s. 47. and of the evangelii sane non Judaici, sed Pontici interim *adulterati.* Adv. Marc. s. 2. He maintains that the genuine Gospel under Marcion *adulteros* passum est, and was *adulteratum* by means of interpolation, et inundatione falsariorum. s. 3. He describes the spiritual adversary as ex diversitate prædicationis primo regulam *adulterans* fidei et ita ordinem *adulterans* disciplinæ. De Monog. s. 2. In the same sense he opposes *adulterium* to the truth, in respect of the progressive deterioration of the Christian doctrine: Verum quodcunque primum: *adulterum* quodcunque posterius. Adv. Prax. s. 2. Compare De Pr. Adv. Hæ. s. 31. where the more recent doctrine is pronounced *adulterum* et falsum.

It is plain, therefore, that Tertullian means by *adul-*

terium any thing spurious, false, or corrupt, any thing contrary to or removed from Christian truth, purity, and discipline. But it is necessary to shew that he adverts to the word in the sense of *alienation and apostacy*, especially in matters connected with marriage.

He refers to Saint Paul's expression, 1 Cor. v. 10. of the necessity of going out of the world if we would avoid association τοις πορνοις του κοσμου τουτου, η πλεονεκταις η ἁρπαξιν, η ειδωλολατραις, and maintains, that the precept does not forbid communion cum idololatris et *adulteris* et cæteris criminosis . . . cum peccatoribus . . . cum ethnicis . . . cum omnibus. De Idol. s. 14. In another allusion to the same precept, he says, Nam et ethnicus homo adversarius noster est, incedens in eâdem viâ vitæ communis. Cæterum oportebat nos de mundo exire, si cum illis convesci non licet. De Anima. s. 35.

In alleging instances of the divine vengeance upon apostacy, and the neglect of the divine institutions, he brings forward the case of the daughters of Moab: Cum divertisset Israel apud Sethim, abeunt libidinatum ad filias Moab: invitantur ad idola ut spiritu fornicentur; edunt denique de pollutis eorum: dehinc et adorant deos gentis et Beelphegor initiantur. Ob hanc quoque idololatriam mœchiæ sororem, viginti tria millia, domesticis obtruncata gladiis divinæ iræ litaverunt. c. Gnost. s. 3. Here the trespass is plainly called idololatria, mœchiæ soror: the judgment is otherwise treated as a judgment on fornication in the treatise De Pud. s. 6. of which the purpose is to prove the unpardonable nature of incontinence.

In considering Tertullian's use of *adulterium* for πορνεια in respect of marriage, it is necessary to bear in mind what kinds of marriage he held to be unlawful. It was his general doctrine, that not marriage itself, but the *exorbitatio* of marriage, was prohibited. With this view he held second marriages to be unlawful, and pronounced them species *stupri* . . . adfine *stupri*. De Exh. Cast. s. 9. Quæ hæresis, ni secundas nuptias, ut illicitas *juxta adul-*

terium, judicamus? Quid est enim *adulterium*, *nisi matrimonium illicitum?* De Monog. s. 15. Nec secundas quidem post fidem nuptias permittitur nosse, nuptialibus et dotalibus si forte tabulis a mœchiæ et fornicationis opere diversas. De Pud. s. 1. He also held clandestine marriages to be illegal, and liable to the charge of fornication and adultery: Penes nos occultæ quoque conjunctiones, id est, non prius apud Ecclesiam professæ juxta *mœchiam et fornicationem* judicari periclitantur. Ibid. s. 4. Arguing on the authority of the apostle, Tertullian also held the illegitimacy of marriage between the believing and the unbelieving: Certe præscribens, *tantum in Domino* esse nubendum, nequis fidelis ethnicum matrimonium contrahat legem tuetur creatoris allophylorum nuptias ubique prohibentis. Adv. Mar. s. 7. He also connects these marriages with the apostle's use of the words πορνη and πορνεια: Fideles matrimonia Gentilium subeuntes *stupri* reos esse constat, et arcendos ab omni communicatione fraternitatis. Cum ejusmodi nec cibum sumendum. At nunquid tabulas nuptiales de illo apud tribunal Domini proferemus? Et matrimonium rite contractum allegabimus, quod vetuit ipse? Non *adulterium est quod prohibetur, non stuprum est?* Extranei hominis admissio minus templum Dei violat, minus membra Christi cum membris *adulteræ* commiscet. Ad Ux. ii. s. 3. In this passage the guilt of *stuprum* is imputed to the believer who marries with the Gentile: the sentence of excommunication identifies him with the brother who is πορνος, 1 Cor. v. 11. This prohibited marriage is called *adulterium*, and the Gentile woman with whom it is contracted, the πορνη of the apostle, *adultera*. The passage thus proves the sense in which Tertullian uses the word *adulterium*, as the representative of πορνεια. It may be further asked, how and where has our Saviour himself forbidden these marriages? By what term, except the word πορνεια, used as distinct from μοιχεια, Matt. xv. 19. Mark vii. 21. or applied in the clause of exception, to denote the only ground of a legitimate divorce?

Again; in alluding to the apostle's words, δια τας πορνειας, 1 Cor. vii. 2. Tertullian holds, that the argument and permission of the apostle were designed to remove the apprehensions of men, qui in matrimonio a fide deprehensi verebantur, ne non liceret eis matrimonio suo exinde uti, or who thought in *matrimoniis ethnicis* non post fidem sibi perseverandum. De Monog. s. 11. In this case the apostle relaxed the rigid rule of matrimony, ut *fornicationi* obviam esset; and to meet the exigency of the occasion he permitted and authorized matrimonii usum. Indulget sane non *adulteria*, sed nuptias: parcit sane matrimoniis, non *stupris*. De Pud. s. 16. Compare De Animâ. s. 39. The marriage of the Gentiles *before* their conversion was affirmed; it was matrimonium or nuptiæ: the marriage of a believer with a Gentile was adulterium, fornicatio, πορνεια.

Without a clear apprehension of the sense, in which Tertullian uses *adulterium* or πορνεια, it would be difficult to understand the sense which he puts upon the clause of exception in our Lord's rule of divorce, to which he makes four different allusions.

In the treatise De Monogamiâ, in which he argues against the validity of more marriages than one, he affirms, s. 9. that our Lord abolished the divorce which had formerly been allowed; because it was not from the beginning, and because it is not for man to put asunder what God has joined together: Solus autem ille separabit, qui et conjunxit, separabit autem non per duritiam repudii, quam exprobrat et compescit, sed per debitum mortis. He insists upon another reason for the divine prohibition of divorce; viz. that whosoever puts away his wife, præterquam *ex causâ adulterii*, causes her to commit adultery, and whosoever marries her that is put away commits adultery. He argues upon this contingency of divorce, and shews that it cannot occur in second marriages: Nam et nubere legitime non potest repudiata, et si quid tale commiserit, sine matrimonii nomine, non capit elogium adul-

terii, quia adulterium in matrimonio crimen est, that a woman divorced, in pretending to marry, escapes the charge of adultery, which rests on the validity of an approved marriage. For the more perfect resolution of the question, he defines his sense of marriage and adultery, Matrimonium est, cum Deus junxit duos in unam carnem, aut junctos deprehendens in eâdem carne conjunctionem signavit. Adulterium est, cum quoquo modo disjunctis duobus, alia caro, imo aliena miscetur, de quâ dici non potest. Hæc est caro ex carne meâ, et hoc os ex ossibus meis: and when this communion is once ratified, it holds without distinction, whether the parties be living or dead. Adulteratur autem, sicut supra præstruximus, qui aliam carnem sibi immiscet super illam pristinam, quam Deus aut conjunxit in duos, aut conjunctam deprehendit. In this use of the word *adulteratur*, as also of the elogium *adulterii*, Tertullian insists upon the contingency of an unjust divorce; making no reference to the clause of exception, and asserting the entire abolition of divorce. Abstulit repudium, quod ab initio non fuit, ut quod ab initio fuit muniat, duorum in unam carnem perseverantiam, ne necessitas vel occasio tertiæ concarnationis irrumpat, soli causæ permittens repudium, si forte prævenerit, cui præcavetur. What then is the only cause for which divorce is permitted? the nothing præterquam ex causâ adulterii? that of which it is said, si forte prævenerit, cui præcavetur? It is most consistent with the whole passage to understand it of the adulterium or πορνεια of second marriages, in which divorce is not followed by adultery, because there is no marriage; in which neither Deus conjunxit duos, aut conjunctos deprehendit; but which is adulterium, because quoquo modo disjunctis duobus alia caro miscetur. In such marriages, prævenit, cui præcavetur. In this view the causa *adulterii* must be understood of a fault preceding, not following the marriage.

He makes another allusion to the clause of exception, with reference to such as were married to the unbelieving,

and in refutation of the objection founded on 1 Cor. vi. 15. coll. vii. 2. Cur si gentili inquinamur non et illa disjungitur, quemadmodum et iste non obligatur? Respondebo, si spiritus dederit, ante omnia allegans Dominum magis ratum habere matrimonium non contrahi, quam omnino disjungi: denique divortium prohibet, nisi stupri causâ. Ad Ux. ii. s. 2. He means that our Lord rather held the invalidity of marriage under certain circumstances, than the dissolution of marriage rightly contracted; and therefore he prohibited divorce nisi *stupri* causâ. But where can our Lord be shewn ratum habere matrimonium non contrahi, or to drop the faintest allusion to the subject, except in the prohibition of divorce, παρεκτος λογου πορνειας, nisi stupri causâ, i. e. according to Tertullian's use of the corresponding terms throughout the whole of this treatise, when the marriage was vitiated by the circumstance of one of the parties being in an alien or infidel state.

He again alludes to the text by the name of mœchia, but without any other exposition than a general assertion of the prohibition of divorce, and the unlawfulness of second marriages: Interea et divortium prohibens, pro eo, aut viduitatis perseverantiam aut reconciliationem pacis dominico præcepto adversus mœchiam procurat, quia, qui dimiserit uxorem præter causam mœchiæ facit eam mœchari, et qui dimissam a viro ducit, mœchatur. Quanta remedia spiritus sanctus instaurat, ne id scilicet denuo admittatur, quod ignosci denuo non vult. De Pud. s. 16. Here the mœchia, as the adulterium before, is the offence of second marriages, in which, as there is really no marriage, there can be no adultery.

In arguing with Marcion, l. iv. s. 34. upon the law of divorce, he labours to reconcile the different doctrines of Moses and our Lord, of which he shews the agreement in respect of the restriction maintained by both; by Moses in permitting divorce only propter negotium impudicum, by Christ in prohibiting it præter causam adulterii. He

adds, that Christ is every where the guardian of marriage, quas nec separari vult, prohibendo repudium, nec cum maculâ haberi, tunc permittendo divortium. Is it possible that Tertullian, in the singular phrase nec nuptias cum maculâ haberi, adverted to the Jewish notions concerning the blotted person, or stranger, the *macula* mala quæ posita est in populis profanis, ut accipiat uxorem integram ex cœtu Domini, as the ὁ ἐκ πορνης is paraphrased by the Chaldee? See above, p. 462. Some incest invalidating the marriage is most consistent with the process of the argument, that our Lord's discourse originated in the imprisonment of John, who had rebuked Herod for having his brother's wife, and thus illicitorum matrimoniorum et adulteri figurâ jaculatus est in Herodem, adulterum pronuntians etiam qui dimissam a viro duxerit. Herod, in being married to the divorced Herodias, was *adulter;* his marriage was also *illicitum*, or incestuous, because she was his brother's wife; and in both respects he was male maritatus; and, as his brother was not childless, he kept possession of Herodias ex libidinis, non ex legis instinctu. Thus, with reference to Herod, the clause of exception will bear the sense of incest, and the offence of a second marriage; in reference to *macula*, it will signify an alien marriage. Both interpretations are consistent with the use of Tertullian, which does not justify the sense of adultery ordinarily so called.

But it is time to leave the authority of Tertullian; and it is no gratuitous conclusion, that although he translates the word πορνεια by *adulterium*, he understands by that term some cause invalidating the original marriage, and especially the incest attached to his notion of second marriage, and the received doctrine of the age concerning marriages with aliens or out of the peculium.

The investigation has now been carried through the writings of the two first centuries, and it has been seen, that during that period, both in the Greek and the Latin Church, the words were at least of ambiguous signification;

that the notion of apostacy was still commonly attached to πορνεια; and that that word was not yet in any unequivocal instance confounded with adultery ordinarily so called. In proceeding to collect the testimonies of the third century, it is natural to annex the evidence of Cyprian to that of his master Tertullian.

Cyprian uses *adulterium* and *mœchia* in their proper and ordinary sense as offences which might or might not be pardoned, according to the discipline of particular Churches, without any infringement of Catholic unity. Ep. 52. but he agrees more generally with Tertullian in comprehending under *adulterium* any thing which is distinct and separate from Christian truth and order. Thus he speaks of the *adulter* et extraneus Episcopus, Ep. 52. of the *adultera* aqua of the heretics, Ep. 73. whom he pronounces sponsa *adultera* et fornicaria. Ep. 74, 75. In the same manner he translates the επορνευσε of Jeremiah by *mœchata* est; and explains it by spiritalia adulteria committere . . corrumpere atque adulterare præcepta divina. Ep. 63. The ὁ δε πορνευων of Saint Paul he also renders qui *mœchatur*, and connecting with the text some other passages in which πορνος is rendered by *fornicator*, and πορνεια by *fornicatio*, he urges upon the heretics not to excuse themselves, quod se dicant idololatris non communicare, quando sint apud illos et *adulteri* et fraudatores, qui teneantur *idololatriæ* crimine; and, after reciting Eph. v. 5. Col. iii. 5. he proceeds; nam cum corpora nostra membra sint Christi, et singuli simus templum Dei, quisquis adulterio templum Dei violat, et qui in peccatis committendis voluntatem Diaboli facit, dæmoniis et idolis servit. Ita fit ut si peccato alterius inquinari alterum dicunt, et idololatriam delinquentis ad non delinquentem transire suâ asseveratione contendunt, excusari secundum suam vocem non possunt ab idololatriæ crimine, cum constat de apostolicâ probatione, *mœchos* et fraudatores, quibus illi communicant, idololatras esse. Ep. 52.

He indulges in more variety in the use of the words

fornicatio and *fornicor*. Thus, in treating de idolis, quæ Gentiles, deos putant, he quotes the words of Jeremiah: Confundar in fornicatione. Lib. Test. iii. 59. He recites the words of the same prophet; Fornicata est illic; fornicata est omnia, in proof that all sins may be forgiven upon repentance. Ex. ad Pœn. s. 23. Besides other unexplained references to the πορνη and πορνεια of the New Testament, he appeals to the dress of the apocalyptic πορνη and of Thamar, in proof mulierem *sæculariter* ornari non debere. Lib. Test. iii. 36. He recites de bonis virginitatis et continentiæ, to which they cannot refer, the words of the apostle, δια τας πορνειας, which he renders propter fornicationem. Ibid. 32. He proves grave delictum esse fornicationis, Ibid. 63. by the text, Qui autem fornicatur in corpus suum peccat: and this precept immediately follows the position, Matrimonium cum Gentilibus non jungendum, which he proves by the instruction of Tobit to Tobias; the conduct of Abraham in respect of the marriage of Isaac; the separation of the Jews from the alienigenas uxores, whom they had married during the captivity; the rule of the apostle concerning marrying *only in the Lord;* and the text, Know ye not that your bodies are the members of Christ? Shall I then take the members of Christ, and make them the members of an harlot, *fornicariæ?* Know ye not that he who is joined to an harlot, *fornicariæ*, is one body? for the two shall be one flesh: but he who is joined to the Lord is one spirit. This text can have no possible relation to the proposition which it is brought to prove, but on the interpretation of fornicaria in the sense of a Gentile woman married to a believer: and Cyprian confirms this interpretation by adding in the conclusion of the proof, Be ye not unequally yoked together with unbelievers.

In this passage Cyprian distinctly recognizes the sense of πορνη which is contended for: and he may be thought to make a more indirect allusion to the same sense in speaking of the pollution of Christ's members per concubitus illi-

citos, Ep. 5. turpi et infami concubitu, without the consciousness of stuprum, but to the prejudice of others; Ep. 6. and of their being so purified from all the filth of the ancient contagion by the sanctification of the laver of life, that nec violari ea aut pollui fas sit, quando qui violat et ipse violatur, and care should always be taken, ne quid immundum et profanum templo Dei inferatur, ne offensus, sedem quam inhabitat derelinquat. De Hab. Virg. In this passage there is a combined allusion to 1 Cor. vi. 15—20. and 2 Cor. vi. 14—18. Compare De Bono Patient. where it is said, Adulterium, fraus, homicidium, mortale crimen est. Sit fortis et stabilis in corde patientia, et nec *adulterio* sanctificatum corpus et Dei templum polluitur. This is the language of Tertullian, which has been already explained.

With this recognition of the true sense of πορνεια the evidence of Cyprian may be concluded. In connexion with many other texts in which he uses *adulterium* and *fornicatio* indiscriminately for πορνεια, and in one of which, if there be any consistency in his expositions, he has ascertained the sense which he attaches to both, he recites the clause of exception: Hanc sententiam, quando uxorem dimitti non nisi ob adulterium, dixit, interrogatus, tantum honorem pudicitiæ dedit. . . . Hinc apostolus dicit; Hæc est voluntas Dei, ut abstineatis a fornicatione. Hinc et illud dicit, membra Christi membris meretricis non esse jungenda. . . . Hinc merito regnum cœlorum non tenent adulteri; hinc est, omne peccatum extra corpus esse, solum adulterum (τον πορνευοντα) peccare in suum corpus. De Bono Pudicit.

In the Tractatus de xii Abusionibus Sæculi, annexed to the works of Cyprian, the nothi, or bastards, according to Saint Paul, are called adulteri, and are described as men who sine disciplinâ sunt, et cœlestis regni hæreditatem non capiunt. The comment is valuable in explaining the notion of that age concerning the meaning of the adulteri, and, by consequence, of *adulterium*, as the

representative of πορνεια: the adulteri were not sons of God, nor included in his covenant, but spurii, aliens, like the children εκ πορνης of the law.

In the Libellus de Singularitate Clericorum the words occur in their received sense, s. 11, 8. and remotely suggest the sense of apostacy, s. 8. The writer says of the prevailing heresies concerning marriage, Prævidebantur a Domino hæretici, qui nuptias auferunt, et quod Deus junxit, contra naturæ principium et contra evangelium separare contendunt.

In the Epistle de Cibis Judaicis are recited the apostle's words: Meats for the belly, and the belly for meats; but the Lord shall destroy both it and them. Now the body is not for fornication, but for the Lord. The argument is upon the abolition of the legal sacrifices, and the consequent distinction of meats: and neither the argument nor the text has any relation to incontinence. The comment however, if comment it may be called, may betray the progressive misapprehension and perversion of the sacred language; Deus ventre non colitur nec cibis . . . nam qui per escas Dominum colit, prope est ut Dominum habeat ventrem suum. After an interval is added the sound but irrelevant maxim, Justitiâ et continentiâ et reliquis Deus virtutibus colitur.

Min. Felix marks the distinction between adultery and simple whoredom: Conducuntur stupra, tractantur lenocinia, adulteria meditantur. Octav. s. 25. He speaks of the adulterium of Mars and Venus, s. 22. less distinctly of the attempt of Cybele adulterum suum ad stuprum inlicere. s. 21.

Arnobius strongly distinguishes whoredom from adultery: Ad libidinem homines proni, atque ad voluptatum blanditias naturæ infirmitate proclives, adulteria tamen legibus vindicant. Adv. Gen. l. iv. s. 23.

Lactantius properly belongs not to the third but to the fourth century, but it is desirable to add his testimony, because he is the first to give the exposition of the text,

which was agreeable to the imperial court under which he flourished, and it may be useful to compare the classical precision of his style with the ruder and more simple doctrine and expression of the earlier fathers; nor is it of inconsiderable importance to remark, that the language which was used by the courtier corresponded with the law which was modelled by the court. If the desire of generalizing the Christian doctrine, if the studied purity of his style, and the circumspection with which he avoids the homeliness of scriptural phraseology, had not restrained him, he might have confirmed the proof that *fornicatio* is equivalent to religious apostacy. It is probable that he refers to the frequent apostacies of the Jews: Inst. l. iv. c. 10, 11. Epit. c. 43. and it is hardly possible to doubt his reference to the Apocalypse in describing the power of the Antichrist, under whom sapientium plurimi allicientur ab eo (from God.) Inst. l. vii. c. 17. and in respect of the destruction of Antichrist he says, Malitiâ extinctâ et impietate compressâ non coluntur ulterius dii manufacti.

τριψουσι δ' ειδωλα βροτοι
εργα δε χειροποιητα θεων καταχαυθησονται. Inst. l. vii. c. 19.

Although in one passage he defines adulterium to be quod fit contra naturam, Inst. i. 10. he generally, but not without exception, Inst. i. 17. v. 10. Epit. c. 8. uses adulterium in its proper and ordinary sense. He makes the distinction between adultery and whoredom: adulteria et stupra et mulierum prostitutiones, Inst. v. 8. Cf. 10. vi. 19. Epit. c. 61. and between the adulteress and the whore: adulteræ, lenæ, meretrices. Quid meretrix . . . quid adultera, quid lena? Epit. c. 20. He denies the adultery of women under a community of wives; Inst. iii. 22. and maintains the comprehensive nature of the seventh commandment in making simple whoredom subordinate to adultery: Hoc præcepto non solum corrumpere alienum matrimonium prohibemur, quod etiam communi gentium jure damnatur; verum etiam prostitutis corporibus abstinere. Epit. c. 64.

With this evidence it would be more than vain to dispute the interpretation which he puts upon the clause of exception, notwithstanding the unexampled novelty of the sense and the expression: Sicut fœmina castitatis vinculis obligata est, ne alium concupiscat, ita vir eâdem lege teneatur, quoniam Deus virum et uxorem unius corporis compage solidavit. Ideo præcepit non dimitti uxorem nisi *crimine adulterii revictam*, ut nunquam conjugalis fœderis vinculum, nisi quod perfidia ruperit, resolvatur. Epit. c. 66. Inst. vi. 23.

In the voluminous writings of Origen there is abundant evidence of the principal meaning of the words in question: but the exuberance of this writer's imagination, his passion for mystical and allegorical expositions, and the general deficiency of his judgment, are fatal impediments to his authority as a critical expositor of the Scriptures, even if, in respect to the present enquiry, he was not the first to embarrass the clause of exception with the suggestion of other equivalent clauses of divorce. It is certain that he was acquainted with the classical meaning of πορνεια, and that he distinguished that word from μοιχεια. Thus, μοιχειαν, κλοπην, πορνειαν—το γαρ της μοιχειας ονομα κοινωνια εστιν ανδρος και γυναικος σημαντικον . . . και επι της πορνειας δε ὁ αυτος λογος. De Rect. in Deum Fide, s. 4. ει δε διωκει ἡ πορνεια, δηλον ότι και ἡ μοιχεια. Select. in Ps. xxx. και μοιχευθηναι τηνδε, και πορνευσαι τουσδε. Comm. in Joh. tom. xx. s. 20. It is also certain, and instances have been already given in proof, that he understood the words in the sense of personal and religious separation and apostacy. Thus επορνευσε μοιχευθεισα is explained by ἑαυτην απεστησε. Comm. in Matt. tom. xiv. s. 17. So he speaks of Christ's subduing the evil passion of the Gentiles, καθ' ὁ ειδωλολατραι ησαν και πορνοι. Select. in Ps. ii. ἑκαστος ἡμων οιεται, ότι μη ειδωλολατρευσεν, επει μη πεπορνευκεν. Hom. xix. in Jer. s. 3. πορνευει ὁ αποστας του ενορᾶν τῳ καλλει του της αληθειας λογου. Select. in Ezek. c. vi. He calls the Gentiles εθνη πορνειας: In Jerem. Hom. i. s. 14. and explains the γυναικα πορνειας by τους απο

των εθνων. Comm. in Matt. tom. xii. s. 4. In Comm. on Ps. lxxiii. he remarks, ούτος πορνευει απο Θεου, ὁ επιδεδωκως έαυτον τῃ των δαιμονων λατρειᾳ: and on Ps. cvi. πορνευει ψυχη σπερματα λαμβανουσα της αντικειμενης δυναμεως και τικτουσα τεκνα πονηρα. He explains the transgression in Num. xxv. 1. to be πορνεια χαλεπωτατη . . . αυτη δε ην το αποστησαι μεν του Θεου, τελεσθηναι δε τῳ Βεελφεγωρ. Select. in Deut. Cf. Hom. xx. in Num. He speaks of our Saviour's being μετα πορνης, Select. in Ps. xxvii. by whom he probably means, with Heracleon, the woman of Samaria; and in referring to the history, Luke vii. 39. he adverts in the same sense, τῃ πορνῃ τῃ μετανοουσῃ. In Jer. Hom. xv. s. 6. He admits the difficulty, and indulges in the most varied exposition, of the text: Qui jungit se meretrici; pro viribus meis discutiens profundum satis et reconditum in iis verbis intuebar apostoli sensum, qui ita definierit, quod omnis anima aut Domino conjuncta est aut meretrici; et intellexi, quod Dominum quidem dixerit virtutes, quæ Christus est . . . meretricem vero omnes e contrario malitiæ species. In Num. Hom. xx. In another passage he places the offence, inter prima sacrilegia, among the crafts of the devil, illudentis hominem atque hujuscemodi peccati incontinentiam provocantis. Hom. i. in Ps. xxxvii. Again he understands the corresponding expression of πορνης μελη in its ordinary sense, c. Cels. l. iv. s. 26. at another time he explains it of carnal desire: hic mireris, si carnem meretricem vocet, quæ illis omnibus quæ supra enumeravimus vitiis atque peccatis, tamquam turpissimis amatoribus subjacet. Comm. in Ep. ad Rom. l. vi. s. 1. In another place, in conjunction with the πορνη of the Proverbs, he calls it ψευδωνυμος γνωσις· ὁ δε κολλωμενος προς αυτην ἐν σωμα εστιν αυτῃ. Select. in Ps. cxvii. Again he conceives it to mean πορνη ὑλη, the issue of Satan, οἵτινες και τοις σωματικοις προσπεπονθοτες και προσηλωμενοι κολλωνται τῃ πορνῃ ὑλῃ, γενομενοι προς αυτον ἐν σωμα. Comm. in Joh. tom. xx. s. 14. Lastly he puts in contrast ἡ εκκλησια των εθνων . . . ὁ δε κολλωμενος τῳ Κυριῳ. In Jer. Hom. xi. Origen himself could not have condescended to

offer such interpretations if there had not been some ambiguity in the original word, which it was not in his power to develope. The original meaning of the word was now falling into disuse, and the way was prepared for the doubts which Origen suggested in enlargement of the restricted permission of Divorce: μετα ταυτα φησιν ὁ σωτηρ ἡμων, μηδαμως επιτρεπων επ' αλλῳ ἁμαρτηματι διαλυειν γαμους, η μονῃ πορνειᾳ ευρισκομενῃ εν τῃ γυναικι, το· ὁς αν απολυσῃ την γυναικα αυτου, παρεκτος λογου πορνειας, ποιει αυτην μοιχευθηναι· ζητηθειη δ' αν δια τουτο κωλυει την γυναικα απολυσαι, εαν μη επι πορνειᾳ μεν ἁλῳ· φερε δ' ειπειν, επι φαρμακειᾳ, η αναιρεσει παρα την αποδημιαν του ανδρος του γενηθεντος αυτοις παιδιου, η εφ' οἱῳδηποτε φονῳ· ει δε και ὑφαιρουμενη, και συλωσα την οικιαν ευρεθειη του ανδρος, μη πορνευουσα δε, ζητησαι τις αν, ει ευλογως την τοιαυτην αποβαλει, ὡς του σωτηρος κωλυοντος, παρεκτος λογου πορνειας απολυσαι τινα την ἑαυτου γυναικα. Comm. in Matt. tom. xiv. s. 24.

It is useless to extend the investigation of the meaning of these words. The sense of adultery, now attached to πορνεια, has been traced from times in which it was not, to those in which it was, admitted into the Church; and it has been shewn, that during the whole period the sense of apostacy was predominant. It has been also shewn, that πορνεια does not, and that μοιχεια does, signify adultery. It has been further shewn, by the citation of numerous texts compared with their contexts, and with the most ancient comments and versions, that apostacy properly so called is the prevailing signification of the word in the use of the Hellenistic writers, who use other words to denote personal prostitution: and it has also been shewn, that the words denote, in the use of the LXX, of the apocryphal writers, and of the New Testament, the particular apostacies of the Gentile initiation, and marriage with aliens. Among the few remains of the first century there is a remarkable disuse of the word in its ordinary sense, a distinction between μοιχεια and πορνεια, and a recognition of the sense of apostacy. Traces of the same idiom are

perceptible in the second century, of which the evidence is closed with the peculiar sense in which Tertullian uses the word *adulterium*, and in which he applies the πορνεια of the Scripture to the clause of exception, and to many other passages in the sense of a forbidden marriage, a sense which predominates throughout the two Treatises ad Uxorem, and throws new light upon those treatises and the quotations from Scripture which they contain. Cyprian adopts Tertullian's sense of *adulterium*, and occasionally his interpretation of πορνεια: and Origen, admitting the Hellenistic meaning of the word, throws out suggestions of new causes of divorce. In the beginning of the fourth century Lactantius affirms adultery to be the cause of divorce, and all further enquiry is superseded by the force of imperial law.

Before this period but little attention had been paid to the clause of exception; no attempt had been made, except by Origen, to mitigate its restriction; it had been seldom quoted; Tertullian was almost its only expositor; and all the Christian fathers were agreed in upholding the indissolubility of marriage, as if there had been no clause of exception, or as if that clause related only to a cause precluding the marriage. Under the new exposition very different sentiments and very different expressions began to prevail in respect of the permissive law of divorce. It is not necessary here to repeat the history of these variations. The main purpose of this investigation will be fulfilled, if it has been shewn, in the language of Gibbon, that πορνεια does not mean matrimonial sin; if the primary sense of any sacred text has been restored; if the law of divorce has been restricted to faults precluding rather than dissolving marriage; if, in concurrence with other arguments, a just suspicion has been thrown on the doctrine of divorce for adultery; and new caution been excited in repeating the words of the learned Spencer: Liquidius nihil est, quam quod adulterium iis in locis Matt. v. 32. xix. 9. nomine πορνειας contineatur. De Leg. Hebr. l. ii. c. 1. s. 2.

No. II.

DOCUMENTS, EXPLANATORY OF THE OBJECTIONS OF UNITARIANS AND FREE-THINKING CHRISTIANS TO THE OFFICE FOR THE SOLEMNIZATION OF MATRIMONY, AND OF THE GROUNDS UPON WHICH THEY SEEK THE PRIVILEGE OF MARRYING IN THEIR PRIVATE CONVENTICLES.

1. Copy of *Petition addressed to the Houses of Parliament.* From the Edinburgh Review, No. LXIX.

"THAT your petitioners are Protestant Dissenters, differing from the Established Church with regard to the doctrine of the Trinity, (and resident at or near) or (usually assembling at) for the purpose of religious worship.

"That the marriage service required by the existing law is inconsistent in several points with the religious belief which your petitioners conscientiously entertain.

"That by the municipal laws of many Christian states, as well as of this kingdom prior to the Act of 26 Geo. II. c. 33. commonly called the Marriage Act, the matrimonial contract has been considered as essentially of a civil nature, although usually consecrated by some religious ceremony.

"That accordingly the marriages of Dissenters, celebrated in the face of their own congregations after the date of the Toleration Act, were considered valid by our courts of law, although some attempts made to disturb such marriages in the ecclesiastical courts, served to dispose the majority of Dissenters (between whom and the Established Church there was then no essential difference in points of doctrine) to conform in that particular to the ritual of the Church.

"That whilst your petitioners are far from wishing to impugn the policy of the Marriage Act, considered as a measure of civil regulation, they beg leave to suggest, that in its operation, in connexion with the present Church

Service, it imposes a burthen on conscience, which they humbly conceive was not intended by the legislature, as may be fairly inferred from the exemption in the Act, of the two classes of persons against whose religious feelings and discipline it seemed particularly to militate.

"That the just and liberal disposition of the legislature, manifested towards your petitioners by the Act passed in the 53d year of his present Majesty, c. 160. has encouraged them to hope, that their religious opinions present no sufficient objection to the extension in their favour of the recognized principle of toleration: but they humbly submit, that such toleration is in their case necessarily incomplete, while they are obliged by the marriage law to join in a service, repugnant in many parts to their religious feelings and principles.

"Your petitioners therefore humbly pray, that your (right) honourable House will take their case into your serious consideration, and afford them such relief in the premises as in your wisdom shall seem meet.

"And your petitioners shall ever pray," &c.

2. Copy from the Times, Aug. 11, 1824, of *Resolutions passed "at the Annual General Meeting of the Unitarian Association*, held at the London Tavern on Thursday, June 10, 1824. G. M. Davidson, Esq. in the Chair.

"Resolved, That the thanks of this Society are preeminently due to the Marquis of Lansdowne, for his distinguished and zealous exertions in promoting the Bill for the relief of Unitarians from the operation of the marriage law; and for his constant attention to the deputations of the committee in their various interviews with him.

"That this meeting views with sincere pleasure the truly Christian spirit displayed by many members of the episcopal bench, and more particularly by his Grace the Archbishop of Canterbury, in supporting a measure of so much importance to the preservation of mental sincerity

and integrity of conscience, without which no religious service can be useful or acceptable.

"That the sincere thanks of this Meeting are also due to the Earl of Liverpool and Earl Harrowby, for their liberal and candid attention to the case submitted to their consideration; and to the former more particularly, for his candid declaration of his sense of the unequivocal intention of the legislature to place Unitarians upon the footing of other Protestant Dissenters, by the Act of the 53d Geo. III. and of their just title to further relief in the event of doubts attaching to the complete operation of that Act.

"That this Meeting is also anxious to express its gratitude to Lord Holland, for his manly and energetic support of the rights of conscience; and to such other noble Lords on both sides of the House as furthered the measure by their speeches or votes.

"That while the members of this association are encouraged to look with confidence to the ultimate success of their efforts, they think themselves called upon thus publicly to declare the true object of their complaint; the grounds on which they seek relief; and the plan of redress which they have ventured to suggest.

"That the present marriage law of England, first made in the year 1753, and for the avowed purpose of merely preventing clandestine marriages, requires all persons, except Jews and Quakers, to join on that occasion in the worship and service of the Established Church.

"That the conformity thus imposed upon the Unitarian Dissenter, is repugnant to his conscientious feelings and opinions; first, because as a Dissenter he objects to being forced to join for civil purposes in the ordinances of that Church, from which he conscientiously withdraws himself, under the sanction and protection of the law: but secondly and chiefly, because the marriage service of the Church is one in which he cannot as a Unitarian join, without a species of equivocation, painful to his conscience and degrading to an honourable mind.

"That this compulsive conformity is comparatively of recent origin, the Church having no such exclusive privilege, until it was conferred upon it (not as an ecclesiastical privilege, but as a civil regulation) in 1753, prior to which time marriage appears to have been in England as in almost all other countries a civil contract, requiring for its legal validity the sanction of no Church.

"That the enforcement of conformity in this respect is repulsive to the policy of the existing laws of England, which, long previous to the Marriage Act, had sanctioned and protected the right of dissent from the worship and discipline of the Church.

"That the effect of this Act, so far as it operates as a constraint on conscience, could not have been intended by the legislature; that the framers of it had avowedly in view merely the civil object of promoting regularity in the formation and registration of the matrimonial contract; and that this is evidenced by the exception of the parties (Jews and Quakers) against whose religious habits and opinions it obviously militated—which exception would most probably have been extended to Unitarians, if their worship had at that time been included, as it now is, within the protection and sanction of the Toleration Acts.

"That the grievance is extremely partial, inasmuch as the marriages of all Dissenters in Ireland are legalized by express Act of Parliament, passed in 1772, after the fullest discussion, as those contracted in Scotland are of course binding; and as only a few years ago an Act was passed for rendering valid Presbyterian marriages in British India.

"That the law is not only unjust, but that it is not warranted by the slightest political or civil expediency, inasmuch as the object in view, the due publicity and registration of marriages, may notoriously and obviously be accomplished with the greatest ease, without any restraint on religious feelings.

"That if the legislature feels itself in any manner called

upon to interfere with the celebration of marriage as a religious ordinance, in order to secure a binding and impressive influence on the consciences of the parties concerned; still it is clear that such an object can best be accomplished by avoiding all constraint, and by choosing such religious ceremonial as will be accordant to the feelings, and therefore most likely to produce the desired effect on the minds, of the parties.

"That the existing constraint is not only vexatious to Unitarian Dissenters, but must, as they conceive, be extremely unpleasant to the ministers of the Church, who by the existing law are obliged to administer sacred ordinances to, and join in religious worship with, persons who are known to them on all other occasions to disavow and publicly renounce their communion.

"That as a remedy for this grievance, the Bill recently introduced, provided for the observance of every one of the forms now required, as well as for the maintenance of the fees and emoluments of the Church, and merely allowed the religious service on the occasion to be performed by the parties, according to their own mode, and in their accustomed places, registered for the purpose under clearly defined regulations and restrictions.

"That the exact letter of the precedent in the Marriage Act of 1753, (of merely exempting Jews and Quakers from its operation,) was not followed in this Bill; first, because the interests of the whole community, and the avowed policy of the law, plainly require the checks and regulations which it imposes to be of general obligation, though in the case of parties so distinctly marked as the Jews and Quakers, a relaxation in their favour could be granted without danger: secondly, because the Unitarians sought to withdraw themselves from no sort of civil restraint or inconvenience, but were willing even to undertake additional responsibility, and trouble, and expence: and thirdly, because it was avowedly expected of them that nothing should be sought to be altered which was not

necessarily required by the concession to their religious scruples.

"That registration in the common parochial register was proposed to be preserved, (in the absence of any other authorized and established register duly preserved,) because there would thus be a service to be performed, in respect of which the Church minister might receive his accustomed fees; because the continuance of one general register, in which marriages are numbered consecutively, was considered to be of great value, not merely to Unitarians, but to the whole community; and lastly, because it was conceived that such a duty (performed as it is now, under the requirements of the law, as a matter of civil not of ecclesiastical policy) could not be objected to as derogatory to the dignity of the Church, on any grounds which would not apply with far greater force to the obligation now imposed upon that Church, of receiving into its religious ordinances, for a merely civil object, parties who openly renounce its discipline and doctrines.

"That this Meeting instructs its committee to persevere in their applications until the justice of their claims be fully recognized, and the grievance be completely removed; in a firm reliance on the justice of the legislature for the admission of claims so obviously just, and on its wisdom for devising a mode of relief, which shall combine a due regard for the rights of conscience with that attention to the civil interests of the community, which none are more ready than the Unitarians fully to recognize and admit, and, so far as in them lies, conscientiously to uphold."

3. Copies of *Protests delivered on various occasions by the Free-thinking Christians.*

"To Mr. Crosby, commonly called the Rev. Mr. Crosby[a].

[a] From the Free-thinking Christians' Qu. Reg. No. III. p. 293. This Protest claims attention as the first and original Protest which was delivered. The passages between parentheses were added in a Protest delivered to "Mr. Jones,

"The undersigned, being Unitarian[b] Dissenters, present to you the following Protest against the marriage ceremony, to which according to the laws of the land they are compelled to subscribe: they disclaim all intentions of acting disrespectfully either to the legislature or to its civil officer, before whom they stand; and they lament that they are placed in a situation so unnatural, as that even forbearance to what they consider as established error, would be a formal recantation of opinions which they received on conviction, and which they will only renounce on similar grounds. Against the marriage ceremony then they can but most solemnly protest:—

"Because it makes marriage a religious instead of a civil act:

"(Because parts of the ceremony are highly indelicate, and must to every correctly constituted mind be extremely offensive:)

"(Because the man is required to worship the woman, though the founder of Christianity has declared that God is the only object for the Christian to worship:)

"(Because it requires the recognition of the doctrine of the Trinity, than which nothing can be more oppressive to those who disbelieve, conscientiously and after patient investigation, that doctrine; conceiving that the whole of revelation fully sanctions their joining the apostle Paul in declaring, that "To us there is but one God and one Mediator between God and men, the man Christ Jesus:")

"Because, as Christians and Protestant Dissenters, it is impossible we can allow of the interference of any human institution with matters which concern our faith and consciences:

"Because, as knowing nothing of a priesthood in Christianity, the submission to a ceremony performed by a

of the parish of West Ham, Essex, usually entitled the Rev. Mr. Jones," at the marriage of Henry B. Fearson, Johanna Thompson. Other material differences in the two Protests are marked in the following notes.

[b] Protestant.

person in holy orders, or pretended holy orders, is painful and humiliating to our feelings.

"Because[c], as servants of Jesus, we worship the one living and true God, his God and our God, his Father and our Father; and disbelieve and abominate the doctrine of the Trinity, in whose name the marriage ceremony is performed.

"Signed, William Coates, Mary Anne Thompson, Members of the Church of God, known[d] by the name of Free-thinking Christians."

"June 10, 1814.

"The[e] undersigned, members of the Church of God meeting in London, being Protestant Dissenters, and commonly known by the name of Free-thinking Christians, in obedience to the dictates of their own consciences, and in accordance with the instructions of the Church to that effect, hereby protest, as well on the part of the Church as on their own part, against the use in their instance of the marriage ceremony, as contained in the Book of Common Prayer; to which ceremony, though the same be contrary to their belief, they are compelled to submit, as the only means of obtaining a legal marriage. They feel themselves compelled to protest against such ceremony for the following reasons:

"1st, Because, whilst admitting the *civil* institutions of the country, they deny the *Scripture* (or *Scriptural*) au-

[c] "Because, as warm and firm believers in the truth of Christianity, they disbelieve and abominate the doctrine of the Trinity, in the name of which the marriage ceremony is performed: and because, as servants of Jesus, they worship the one living and true God, his God and their God, his Father and their Father."

[d] "Meeting at the Crescent, Jewin Street, London."

[e] From the Times, Dec. 6, 1824. Protests nearly in the same words were delivered, May 23, 1823, at West Ham, at the marriage of Mr. John Dobell, of Cranbrook, Kent, to Miss Juditha Thompson; and at Clerkenwell, at the marriage of Mr. Richard Nelmes, of Pentonville, to Miss Sophia Ranger, of Marden, Kent.

thority of the Church of England to decree rites and ceremonies; much less to impose such on those who dissent from her community.

"2dly, Because, whilst admitting the civil, they do not admit the spiritual authority of the ministry, by whom the marriage ceremony is performed, believing the Jewish priesthood to have been superseded by Christianity, and none other to have been instituted by Christ.

"3dly, Because they do not believe in the doctrine of the Trinity, in the name of which the marriage ceremony is solemnized; this doctrine appearing to them, and being by the Christian Church of which they are members publicly represented to the world, both in writing and discourse, as one of the many lamentable corruptions of Christianity, alike repugnant to reason and contrary to Scripture.

"W. Woods. S. Hodges."

The insertion of this Protest in the Times, as *from a correspondent*, called forth the animadversions of the Editor in the leading article of the following day: and his remarks are in themselves too valuable to be lost in the miscellaneous matter of an ephemeral publication, and are also indispensable to the right apprehension of a subsequent defence of the Protest.

"We inserted an article from a correspondent yesterday on the subject of a Protest, tendered to a clergyman of the Church of England by a couple about to be married, against the ceremony according to which the clergyman was bound by his duty and solemn obligation to perform the rite. The manner in which we have here stated the case will shew our opinion upon it. If the clergyman had previously promised to accept the Protest, he had inadvertently entered into an improper engagement, from the infraction of which however the party, with whom the engagement was made, could receive no damage: for what good could this Protest do them, unless the degradation of

the parish priest were a good to those who were married by him? What have the clergy of the Established Church to do with Protests of this nature? Or where is the acceptance of them enjoined as a part of their duty? It is not optional with them to use or omit a part of any of the Church ceremonies. They pledge themselves, and are solemnly bound at their ordination, to comply with the Liturgy of the Church of England: their hands therefore are tied, and it seems excessively foolish to pester them with Protests in an affair totally beyond their control. It would be quite as rational in the clergyman to give the couple a Protest on account of their faith, as for them to give him one on account of a rite contained in the Book of Common Prayer. Indeed it appears to us, that if a dissenting couple must tender a Protest on account of their being married in the Church, and according to its ritual, the minister of their own dissenting congregation is the proper person to whom the Protest should be tendered, and by whom it should be received, for by such a process he learns and is assured, that though this portion of his flock may seem to quit him on the most important occasion of their lives, it is only because the existing law of the land forces them, and that he is not therefore to esteem them as renegades and deserters.

"The particular Protest however in question (that signed W. Woods and S. Hodges) possesses a degree of absurdity peculiar to itself, from which perhaps ingenuity might contrive to purify similar documents in future. The parties protesting first go to the church, and *then* and *there* they protest "against the use in their instance of the marriage ceremony as contained in the Book of Common Prayer." Now suppose for a moment that the clergyman had been inclined to violate his duty, and having got the couple into church had professed his readiness to save them the trouble of a protest by marrying them according to any other form they might wish; *would they have suffered him?* Would they have been content to place the

validity of their marriage upon so rotten a foundation? Certainly not. They therefore protest to the officiating minister against his marrying them by the prescribed form, whilst at the same time they would not suffer him to marry them by any other. Does not this absurdity prove that the clergyman is not the person to whom the Protest should be presented? He does not force *them* to be married according to the ritual of the Church of England: they enter the sacred temple voluntarily, and would force *him*, if he should attempt to diverge, to use that ritual. The Protest then goes on to say, or to complain, that 'the parties are compelled to submit to the Church ceremony as the only means of obtaining a legal marriage.' And is not the clergyman also compelled to submit to the use of that ceremony? How preposterous then, when all are subject to the same compulsion, for one to protest to another of an obligation which is not of *his* imposing to whom the Protest is offered, but by which, whether with or against his will, he is equally bound with the author of the Protest." . . .

It was not to be expected that these remarks would be suffered to pass without an attempt to vindicate the form of the Protest, which had been thus powerfully exposed, and of which a formal defence, under the imposing title of "Dissenters' Marriages," was prepared and inserted in the Times, Dec. 17, 1824.

4. Copy of the *Defence of the Protest.*

"Dissenters' Marriages.

"The Elder and Deacons of the London Branch of the Church of God, commonly known as 'Freethinking Christians,' having observed that the late conduct of two of their members, in protesting against the marriage ceremony, has exposed them to the marked animadversions of a leading daily journal, feel themselves called upon through the same medium to submit to the public the grounds and reasons of their conduct.

" Marriage is regarded by the law of England, and it is held by the Freethinking Christians to be, a civil contract: and even if the language of the Liturgy be adopted, which represents marriage as 'instituted of God in the time of man's first innocency,' it is certain that marriage must then have been performed without the intervention of a priest.

" If in the progress of society it has been thought necessary to superadd a religious solemnization to marriage, in order to increase the sanctions of that state, the very reasons which superinduce such necessity must be defeated, unless the solemnization be consistent with the conscience, and accordant with the faith, of those who are to be bound thereby.

" By a comparatively recent Act of Parliament, (26 Geo. II. cap. 33.) a submission to the marriage ceremony as performed by the Church of England was for the first time imposed on all who sought to obtain a legal sanction to marriage, Jews and Quakers alone excepted.

" Derived chiefly from the Roman ritual and mass-books, the marriage ceremony of the Church of England appears to the Freethinking Christians to be popish in its doctrines, superstitious in its forms, and unsuited in its terms to the refinement of the age or the occasion on which it is used.

" Bound in all things by the authority of Scripture and the dictates of conscience, the Freethinking Christian refuses to yield a voluntary submission to the marriage service, which, if the above representation be correct, it is difficult to suppose can be approved by any serious well-informed Protestant. The objections of the Freethinking Christian however to the service may be categorically stated as follows:—

" Because that service is part and parcel of the religion of the state, and must as such and of consequence be opposed to the religion of Jesus.

" Because it is not a service enjoined in the Scriptures,

but is an assertion only of the unscriptural claim of the Church to decree rites and ceremonies.

" Because the service implies a recognition of the doctrine of the Trinity, and directs divine honours to 'the man Christ Jesus.'

" Because, performed as a religious service by a person in 'pretended holy orders,' it carries with it an admission of the claims of the priesthood, which claims, whether to be regarded as a separate body among Christians, as the ministers of Christ, or the exclusive teachers of religion, are unfounded in Christianity.

" Because it is a public outward act of joint and social prayer, and as such is contrary to the spirituality of the Christian religion, and to the instructions of Him who taught his disciples to pray in secret to their Father.

" Because no earthly tribunal can possess the right to propose a test for religious opinion, much less to render the violation of conscience the condition of obtaining a civil right.

" Because in several particulars it is not accordant with that purity of mind which should at all times characterize the Christian.

" With these objections to the marriage ceremony, as imposed upon him by the law, the Freethinking Christian offers his Protest against that ceremony, or rather against a forced recognition of that ceremony, in his instance. He disclaims all belief in the doctrines he is compelled to subscribe; he declares it is by an act of compulsive conformity alone that his submission is obtained to the forms of the Church; he disowns the sacred functions of the minister about to perform the service; he purges his conscience from all assent to unchristian doctrines and practices, both in the sight of God and of men.

" This Protest he delivers publicly, in the church, before the 'altar,' and to the minister. Publicly—because the ceremony is public. In the church—because in the church he is compelled to submit to such ceremony. Before the

'altar'—because before the 'altar' he is required to yield an especial homage. To the minister—because the minister is the legal, the immediate, and willing agent in performing the service, which under the circumstances must be held to be as great an infraction of conscience, as it is a profanation of religion.

"The Freethinking Christian then according to his apprehension delivers the Protest at the time, in the place, and to the party, when, where, and to whom it is most suitable to be delivered; and this in a manner, and under circumstances, in which it is most likely to prove effective; first, in satisfying his own conscience; and, secondly, in upholding to the world the wickedness, to the legislature the injustice, and to the Church the inconvenience, of obtaining a forced conformity to established doctrines.

"Other and concurrent efforts must be used by the Freethinking Christians to assert in this particular the rights of conscience. They have been the first religious body, who, by means of the press, have called the attention of dissenters to this important subject, and for many years past, and on several occasions, they have in common with the Unitarian body petitioned both Houses of Parliament for relief.

"Thus petitioning the legislature, as the framers of an obnoxious law, and protesting to the clergy, as the executors of such law, have the Freethinking Christians proceeded. They are indeed aware, that where law is opposed to conscience, no course can be wholly free from objection; but they submit, that it is not for those who inflict a wrong to complain of the manner in which it is either received or resisted.

"It is not denied, that the presenting of Protests according to the practice of the Freethinking Christians must be painful to the clergy: but the inconvenience is one occasioned by the law, and the clergyman is the willing instrument of the law. He takes upon himself priests' orders—he enjoys the honours and emoluments of his calling—and

shall he refuse to take the burthen with the benefit, when he offers himself as the instrument of power to violate the rights of conscience? It results also from this statement of the case, that it is by a sophism only, that the situation of him who performs the ceremony can be held to be the same as that of the party to whom it is administered; for it is really distinguished therefrom by all the difference between acceptance and compulsory submission.

"It is asked, 'What have the clergy of the Established Church to do with protests of this nature? or where is the acceptance of them enjoined as part of their duty?' The question is invidious to the clergy, and can only be raised upon the presumption of their being the passive instruments of arbitrary power, or hirelings caring not for the flock. For if the clergy of the Church of England be, as they profess to be, the servants of Christ;—if they hold, as they profess to hold, religion to be a sacred affair between man and his Maker;—if they honour, as they profess to honour, the principles of the Reformation, which overthrew the dominion of law over conscience;—then, by the meekness and gentleness of Christ—by all that is sacred in religion—by whatever was great and glorious in the example of our Reformers—are they bound to receive every declaration by which conscience shall assert its rights and religion maintain its consistency.

"It is said, that 'it would be quite as rational in the clergyman to give the couple a protest on account of their faith, as for them to give him one on account of a rite contained in the Book of Common Prayer.' Perhaps it would; only it should seem the clergyman is more willing to commit his conscience to the keeping of the state than the Free-thinking Christian is disposed to do; otherwise indeed there seems no reason why the clergyman should not protest to the Dissenter against being considered a willing party to so indecent a mockery of religion, as the performance of a solemn ceremony to those who have openly and

beforehand repudiated its sanctions, denounced its ministers, and denied its doctrines!

"Such protests on the part of the clergy, if accompanied by petitions to the legislature, would tend speedily to relieve themselves from a painful duty, and Dissenters from a degrading submission. At present, however, the clergy have neither protested nor petitioned; but they have, by an overwhelming opposition during the last Session of Parliament, defeated the measure of relief, which was proposed to make the Church respectable and the Dissenter free.

"It is part of the case of the Dissenter, that the evil originated with, and is now upheld by, THE CHURCH. A corrupt pontiff, misnamed Innocent (the Third), first rendered marriage in the Church compulsory, and raised it to the rank of a sacrament. The Reformed Church, through the terrors of the ecclesiastical courts, continued to assert the exclusive claim of solemnizing marriage. This claim was for the first time sanctioned by Act of Parliament in 1753. By the progress of opinion the law has become oppressive to Dissenters; they have petitioned the legislature for relief, and the clergy have opposed their prayer. When therefore the Dissenter protests to the clergy of a wrong, it is not without a sense that they have a corrupt interest in the wrong—that they are the cause of its continuance by being the obstacle to its removal.

"The Church, it is true, has become tolerant; but when the Dissenter calls to mind the enlightened declaration made by the prime minister of the Crown, during the debate on the Bill for giving relief to Dissenters in this particular, that 'the argument for the principle of the Bill was unanswerable, as long as Jews and Quakers were exempted from submission to the marriage service;' can he forget his Lordship's too prompt and devout assurance to the reverend bench, that 'he was at the same time unwilling to do any thing which should not receive the ap-

probation of the Church?' To the statement, then, that the clergy 'pledge themselves, and are solemnly bound at their ordination, to comply with the Liturgy of the Church of England,' it should be added—but they have the power to obtain an alteration of the law, so as to dispense with this obligation with respect to the marriage of Dissenters, and they will neither do so themselves, nor suffer others to do so.

"It manifests, also, little acquaintance with this subject, to assert, that 'it is not optional with them (the clergy) to use or to omit a part of any of the Church ceremonies;' for it really is optional with them to do so: and it is remarkable that the Bishop of Worcester should, in the debate above noticed, have defended the principle of the Bill, which was designed to relieve the Dissenter by omitting certain portions of the marriage service, by contending, that it was only proposed to do that by law, which was already to a certain extent done in practice; 'for,' said his Lordship, 'does not every body know, that in large and populous parishes the marriage service is now considerably abridged?'

"Upon the known and ancient custom of the clergy, then, in omitting some portions of the marriage service, and in dispensing with some of the directions of the rubric, the Dissenter prefers a claim to the minister, that in administering the law he will relieve him as far as may be—that he will do that for conscience which he does not hesitate to do for convenience.

"So far also is it from being the case, that the Free-thinking Christian would feel his marriage invalidated by the omission of such parts of the ceremony as violate his conscience, that he really offers his protest in the hope of obtaining such; and that he has in some instances positively and successfully refused to kneel before the altar, and to repeat the names of the Persons of the Trinity.

"Not that the Free-thinking Christians will be contented to receive that relief at the discretion of the clergy,

which they are entitled to claim from the justice of the legislature: nor will they believe that relief can long be delayed, when the principle upon which it was demanded was recognized in the Marriage Act itself, in exempting Jews and Quakers from its operation, and in not being extended to Scotland; when it has since been admitted by the Irish Parliament in the Act passed to allow the Dissenters of the sister kingdom to marry according to their own forms; and when it was in the last Session of Parliament advocated by the most distinguished members of the State, the chief ministers of the Crown, and some even of the dignitaries of the Church.

"Signed, "J. Dillon, Elder,
"D. Harwood
"J. Kilner
"R. Hoverdon } Deacons."
"J. Denman

There is nothing in this defence of the protest which has not been already obviated, (ch. i. ii.) or which renders it necessary to produce the notes, which were prepared in counteraction of every article. It is a singular proof of the temper and judgment with which certain portions of the periodical press are conducted, that it was announced in the Sunday Times, Jan. 1825, in reference to this defence: "The Free-thinking Christians have published a valuable protest against the scandalous practice of compelling Dissenters to be married according to a vulgar ceremony, which they deem impious and degrading." The editor of the Times was far from concurring in this opinion; he inserted the defence of the protest, to which he directed the public attention in an article of the most uncompromising severity.

"We insert an instrument of considerable length, signed by some of the chiefs of the sect of 'Free-thinking Christians,' in reply to some observations we made on a protest, offered by a couple of that sect at their marriage according

to the forms of the Church of England. If the law of the land, or the ceremonies of the Church, were to be altered to please the fantasy of every innovator in politics, or sceptic in religion, nothing permanent or comprehensive could be established. The ritual of the Church of England was made to correspond, by the wisest, the most discreet, and the most pious men that ever lived, with the belief of the majority. It cannot be made to adapt itself to the faith of a thousand different sects, or perhaps to the peculiar tenets of every individual man: for we very much doubt whether any two members, even of this sect of Free-thinking Christians, think alike upon all religious topics. Indeed, what use is there in free-thinking, if they cannot be free enough to think differently from every body else, and from each other? The followers of Johanna Southcote, who we believe are at this moment more numerous than the Free-thinking Christians, would not be content with any marriage ceremony, in which the name of their saint, and an allusion to her miraculous conception, should be omitted. This scruple must be indulged also, no doubt.

* * * *

. . . "if the Free-thinking Christians believe marriage to be only a civil contract, why do they not contract it among themselves by civil forms? Why do they obtrude their remonstrances on the Church? It may be said, because the children of such marriages would in the eye of the law be illegitimate and incapable of succeeding: and how many entailed estates do all the members of the sect of Free-thinking Christians possess? How much property that they cannot bequeath by will? Let replies to these questions be inserted in their next petition to the legislature: and it is under this form in truth that relief should be granted to them—that after a civil contract with penalties, the sexes may cohabit; and that the offspring of such union shall inherit, if there is any patrimony, as if the parties had solemnly plighted their faith at the altar." Times, Dec. 17, 1824.

No. III.

COLLECTION OF OFFICES FOR THE SOLEMNIZATION OF MATRIMONY.

1. *Offices of the Greek Church*, extracted from the ευχολογιον sive rituale Græcorum, complectens ritus et ordines Divinæ Liturgiæ, secundum usum Orientalis Ecclesiæ; illustratum operâ Jacobi Goar. Lutet. Paris. 1647.

(a) Ακολουθια γινομενη επι μνηστροις ηγουν του αρραβωνος.

Μετα την θειαν λειτουργιαν, του ιερεως εστωτος εν τῳ ιερατειῳ παριστανται οἱ μελλοντες ξευγνυσθαι προ των ἁγιων θυρων· ὁ μεν ανηρ εκ δεξιων, ἡ δε γυνη εξ ευωνυμων. Αποκεινται δε εν τῳ δεξιῳ μερει της ἁγιας τραπεζης δακτυλιοι αυτων δυο, χρυσους και αργυρους· ὁ μεν αργυρους απονευων προς τα δεξια, ὁ δε χρυσους προς τα αριστερα, συνεγγυς αλληλων.

Ὁ δε ιερευς σφραγιζει τας κεφαλας των αυτων νεονυμφων εκ γ'. και διδωσιν αυτοις κηρους απτομενους, και εισαξας αυτους ενδον του ναου θυμιᾳ σταυροειδως· και λεγεται παρα του διακονου· Ευλογησον δεσποτα.

Και ὁ ιερευς εκφωνει· Ευλογητος ὁ Θεος ἡμων, παντοτε, νυν και αει, και εις τους αιωνας των αιωνων.

Ὁ χορος· Αμην.

Ὁ διακονος· Εν ειρηνῃ του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ της ειρηνης του συμπαντος κοσμου, ευσταθειας των ἁγιων του Θεου εκκλησιων, και της των παντων ἑνωσεως, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του ἁγιου οικου τουτου και των μετα πιστεως, ευλαβειας, και φοβου Θεου εισιοντων εν αυτῳ, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του αρχιεπισκοπου ἡμων, του δεινος, του τιμιου πρεσβυτεριου, της εν Χριστῳ διακονιας, παντος του κληρου και του λαου, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του δουλου του Θεου, τουδε, και της δουλης του Θεου, τησδε, των νυν μνηστευομενων αλληλοις, και της σωτηριας αυτων, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του παρασχεθηναι αυτοις τεκνα εις διαδοχην γενους και παντα τα προς σωτηριαν αιτηματα, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του καταπεμφθηναι αυτοις αγαπην, τελειαν, ειρηνικην, και βοηθειαν, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του φυλαχθηναι αυτους εν ὁμονοιᾳ και βεβαιᾳ πιστει, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του ευλογηθηναι αυτους εν ὁμονοιᾳ και βεβαιᾳ πιστει, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του διαφυλαχθηναι αυτους εν αμεμπτῳ βιωτῃ και πολιτειᾳ, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὁπως Κυριος ὁ Θεος ἡμων χαρισηται αυτοις τιμιον τον γαμον και την κοιτην αμιαντον, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του ῥυσθηναι ἡμας απο πασης θλιψεως, οργης, και αναγκης, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Της παναγιας, αχραντου, ὑπερευλογημενης, ενδοξου δεσποινης ἡμων, θεοτοκου, και αειπαρθενου Μαριας, μετα παντων των ἁγιων, μνημονευσαντες, ἑαυτους και αλληλους και πασαν την ζωην ἡμων Χριστῳ τῳ Θεῳ παραθωμεθα.

Ὁ χορος· Σοι Κυριε.

Ὁ ἱερευς· Ὁτι πρεπει σοι πασα δοξα, τιμη και προσκυνησις, τῳ πατρι και τῳ υἱῳ και τῳ ἁγιῳ πνευματι, νυν και αει και εις τους αιωνας των αιωνων.

Ὁ χορος· Αμην.

Ειτα λεγει την ευχην μεγαλοφωνως·

Ὁ Θεος, ὁ αιωνιος, ὁ τα διῃρημενα συναγαγων εις ἑνοτητα,

και συνδεσμον διαθεσεως τιθεις αρρηκτον, ὁ ευλογησας Ισαακ και Ρεβεκκαν και κληρονομους της σης επαγγελιας αναδειξας, αυτος ευλογησον και τους δουλους σου τουτους, ὁδηγων αυτους εν παντι εργῳ αγαθῳ· Ὁτι ελεημων και φιλανθρωπος θεος ὑπαρχεις, και σοι την δοξαν αναπεμπομεν, τῳ πατρι, και τῳ υἱῳ και τῳ ἁγιῳ πνευματι, νυν και αει, και εις τους αιωνας των αιωνων.

Ὁ χορος· Αμην.

Ὁ ἱερευς· Ειρηνη πασι.

Ὁ διακονος· Τας κεφαλας ὑμων τῳ Κυριῳ κλινατε.

Ὁ ἱερευς· Κυριε, ὁ Θεος ἡμων, ὁ την εξ εθνων προμνηστευσαμενος εκκλησιαν παρθενον αγνην, ευλογησον τα μνηστρα ταυτα, και ἑνωσον και διαφυλαξον τους δουλους σου τουτους εν ειρηνῃ και ὁμονοια· σοι γαρ πρεπει πασα δοξα, τιμη και προσκυνησις τῳ πατρι και τῳ υἱῳ και τῳ ἁγιῳ πνευματι, νυν και αει, και εις τους αιωνας των αιωνων.

Ὁ χορος· Αμην.

Ειτα λαβων ὁ ἱερευς τους δακτυλιους, επιδιδωσι πρωτον, τῳ ανδρι, τον χρυσουν· ειτα τον αργυρουν, τῃ γυναικι. Και λεγει τῳ ανδρι· Αρραβωνιζεται ὁ δουλος του Θεου, ὁ δεινα, την δουλην του Θεου, τηνδε, εις το ονομα του πατρος και του υἱου και του ἁγιου πνευματος, νυν και αει, και τους αιωνας των αιωνων.

Ειτα και τῃ γυναικι λεγει· Αρραβωνιζεται ἡ δουλη του Θεου, ἡ δεινα, τον δουλον του Θεου, τονδε, εις το ονομα του πατρος, και του υἱου, και του ἁγιου πνευματος, νυν και αει, και εις τους αιωνας των αιωνων. Αμην.

Και ὁταν ειπῃ εις ἑκαστον, τρις, ποιει σταυρον, μετα του δακτυλιδιου επι τας κεφαλας αυτων, και επιτιθησιν αυτους εν τοις δεξιοις αυτων δακτυλοις. Ειτα αλλασσει τα δακτυλιδια των νεονυμφων ὁ συντεκνος. Ὁ δε ἱερευς λεγει την ευχην.

Του Κυριου δεηθωμεν [a].

[a] For the prayer, beginning, Κυριε ὁ Θεος ἡμων, the Office in Bigamos substitutes the following prayers: Δεσποτα, Κυριε ὁ Θεος ἡμων, ὁ παντων φειδομενος και παντων προνοουμενος, ὁ τα κρυπτα γινωσκων των ανθρωπων, και παντων την γνωσιν ειχων, ἱλασθητι ταις ἁμαρτιαις ἡμων, και τας ανομιας συγχωρησον των σων οικετων, καλων αυτους εις μετανοιαν, παρεχων αυτοις συγγνωμην παραπτωματων, ἁμαρτιων ἱλασμον, συγχωρησιν ανομιων, ἑκουσιων τε και ακουσιων· ὁ ειδως το ασθενες της ανθρωπινης φυσεως, ὁ πλαστης και δημιουργος, ὁ Ρααβ τῃ πορνῃ συγχωρησας, και τον τελωνου την μετανοιαν προσδεξαμενος, μη μνησθῃς ἁμαρτηματων ἡμων, αγνοιας

Κυριε, ὁ Θεος ἡμων, ὁ τῳ παιδι του πατριαρχου Αβρααμ συμπορευθεις εν τῃ Μεσοποταμιᾳ στελλομενῳ νυμφευσασθαι τῳ Κυριῳ αυτου Ισαακ γυναικα, και δια μεσιτειας ὑδρευσεως ἀρραβωνιζεσθαι την Ῥεβεκκαν αποκαλυψας· αυτος ευλογησον τον ἀρραβωνα των δουλων σου, τουδε και τησδε, και στηριξον τον παρ' αυτοις λαληθεντα λογον· βεβαιωσον αυτους τῃ παρα σου ἁγιᾳ ἑνοτητι, συ γαρ απ' αρχης εδημιουργησας αρσεν και θηλυ, και παρα σου αρμοζεται ανδρι γυνη εις βοηθειαν και διαδοχην του γενους των ανθρωπων. αυτος ουν, Κυριε, ὁ Θεος ἡμων, εξαποστειλας την αληθειαν επι την κληρονομιαν σου και την επαγγελιαν σου επι τους δουλους σου, τους πατερας ἡμων εις καθ' ἑκαστην γενεαν τους εκλεκτους σου, επιβλεψον επι τον δουλον σου, τονδε, και την δουλην σου, τηνδε, και στηριξον τον ἀρραβωνα αυτων, εν πιστει και ὁμονοιᾳ και αληθειᾳ και αγαπῃ. συ γαρ, Κυριε, ὑπεδειξας διδοσθαι τον ἀρραβωνα, και

εκ νεοτητος· εαν γαρ ανομιας παρατηρησῃς Κυριε, Κυριε, τις ὑποστησεται σοι; ἡ ποια σαρξ δικαιωθησεται ενωπιον σου; συ γαρ μονος ὑπαρχεις δικαιος, αναμαρτητος, ἁγιος, πολυελεος, πολυευσπλαγχνος, και μετανοων επι κακιαις ανθρωπων· συ δεησομενος, οικειωσαμενος τους δουλους σου τον δεινα και την δεινα, ἑνωσον τῃ προς αλληλους αγαπῃ· δωρησαι αυτοις του τελωνου την επιστροφην, της πορνης τα δακρυα, του ληστου την εξομολογησιν· ἱνα δια μετανοιας εξ ὁλης καρδιας αυτων, εν ὁμονοιᾳ και ειρηνῃ, τας εντολας σου εργαζομενοι, καταξιωθωσι και της επουρανιου σου βασιλειας· ὁτι συ ει ὁ οικονομος παντων, και σοι την δοξαν αναπεμπομεν τῳ πατρι και τῳ υἱῳ και τῳ ἁγιῳ πνευματι· νυν και αει, και εις τους αιωνας των αιωνων. Αμην.

Ειρηνη πασι.

Ταις κεφαλαις ὑμων τῳ Κυριῳ κλινατε.

Κυριε, Ιησου Χριστε, λογε του Θεου, ὁ ὑψωθεις επι του τιμιου και ζωοποιου σταυρου, και το καθ' ἡμας διαῤῥηξας χειρογραφον και της δυναστειας του διαβολου ῥυσαμενος ἡμας, ἱλασθητι ταις ανομιαις των δουλων σου· ὁτι το καυσωμα και το βαρος της ἡμερας και της σαρκος την πειρασιν μη ισχυοντες βασταζειν, εις γαμου δειτιραν κοινωνιαν συνερχονται, καθως ενομοθετησας δια του σκευους της εκλογης σου Παυλου του αποστολου, εικων δε' ἡμας τους ταπεινους το· κρεισσον εν Κυριῳ γαμειν ἡ πυρουσθαι. αυτος ὡς αγαθος και φιλανθρωπος ελεησον και συγχωρησον, ἱλασθητι, ανες, αφες τα οφειληματα ἡμων, ὁτι συ ει ὁ τας νοσους ἡμων επι των ωμων αραμενος. ουδεις γαρ εστιν αναμαρτητος, ουδ' αν μια ἡμερα ὁ βιος αυτου εστιν, η χωρις ῥυπου, ει μη συ μονος ὁ σαρκα φορεσας αναμαρτητως και την αιωνιον ἡμιν δωρησαμενος απαθειαν· Ὁτι συ ει Θεος, Θεος των μετανοουντων, και σοι την δοξαν αναπεμπομεν, τῳ πατρι και τῳ υἱῳ και τῳ ἁγιῳ πνευματι, νυν και αει, και εις τους αιωνας των αιωνων. Αμην.

Του Κυριου διηθωμεν.

Ὁ Θεος, ὁ ἁγιος, ὁ πλασας εκ χους τον ανθρωπον, κ. τ. λ. as in the following ακολουθια του στιφανωματος.

στηριζεσθαι εν παντι. δια δακτυλιδιου εδοθη ἡ εξουσια τῳ Ιωσηφ εν Αιγυπτῳ· δια δακτυλιδιου εδοξασθη Δανιηλ εν χωρᾳ Βαβυλωνος· δια δακτυλιδιου εφανερωθη ἡ αληθεια της Θαμαρ· δια δακτυλιδιου ὁ πατηρ ἡμων ὁ ουρανιος οικτιρμων γεγονεν επι τον υἱον αυτου· δοτε γαρ, φησι, δακτυλιδιον επι την δεξιαν αυτου, και θυσαντες τον μοσχον τον σιτευτον, φαγοντες ευφρανθωμεν. αυτη ἡ δεξια σου, Κυριε, τον Μωυσην εστρατοπαιδευσεν εν ερυθρᾳ θαλασσῃ. δια γαρ λογου σου του αληθινου, οἱ ουρανοι εστερεωθησαν, και ἡ γη εθεμελιωθη, και ἡ δεξια των δουλων σου ευλογηθησεται, τῳ λογῳ σῳ τῳ κραταιῳ, και τῳ βραχιονι σου τῳ ὑψηλῳ. αυτος ουν και νυν, δεσποτα, ευλογησον το δακτυλοθεσιον τουτο ευλογιαν ουρανιον, και αγγελος Κυριου προπορευεσθω εμπροσθεν αυτων πασας τας ἡμερας της ζωης αυτων. ὁτι συ ει ὁ ευλογων και ἁγιαζων τα συμπαντα και σοι την δοξαν αναπεμπομεν τῳ πατρι και τῳ υἱῳ και τῳ ἁγιῳ πνευματι· νυν και αει, και εις τους αιωνας των αιωνων. αμην.

Ειτα εκτενη και απολυσις.

(b) Ακολουθια του στεφανωματος.

Ει μεν βουλονται εν τ' αυτῳ στεφανωθηναι, εισερχονται εν τῳ ναῳ, μετα κηρων απτομενων, προπορευομενου του ἱερεως, μετα θυματιου, και ψαλλοντος τον ψαλμον ουτως· ὁ δε λαος εν ἑκαστῳ στιχῳ λεγει το·

Δοξα σοι ὁ Θεος ἡμων, δοξα σοι.

Μακαριοι παντες οἱ φοβουμενοι τον Κυριον.

Δοξα σοι, ὁ Θεος ἡμων.

Οἱ πορευομενοι εν ταις ὁδοις αυτου.

Δοξα σοι, ὁ Θεος ἡμων.

Τους καρπους των καρπων σου φαγεσαι.

Δοξα σοι, ὁ Θεος ἡμων.

Ἡ γυνη σου, ὡς αμπελος, ευθυνουσα εν ταις κλισεσι της οικιας σου.

Δοξα σοι, ὁ Θεος ἡμων, δοξα σοι.

Οἱ υἱοι σου ὡς νεοφυτα ελαιων, κυκλῳ της τραπεζης σου.

Ἰδου ουτως ευλογηθησεται ανθρωπος, ὁ φοβουμενος τον Κυριον.

Δοξα σοι ὁ Θεος ἡμων, δοξα σοι.

Ευλογησαι σε Κυριος εκ Σιων, και ἰδοις τα αγαθα Ἱερουσαλημ πασας τας ἡμερας της ζωης σου.

Δοξα σοι, ὁ Θεος ἡμων, δοξα σοι.

Και ἰδοις υἱους των υἱων σου, ειρηνη επι τον Ισραηλ.

Δοξα σοι, ὁ Θεος.

Ειτα διακονος την συναπτην· Εν ειρηνῃ του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ της ανωθεν ειρηνης, και της σωτηριας αυτων, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ της ειρηνης του συμπαντος κοσμου, ευσταθειας των ἁγιων του Θεου εκκλησιων, και της των παντων ἑνωσεως, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του ἁγιου οικου τουτου, και των μετα πιστεως, ευλαβειας και φοβου Θεου εισιοντων εν αυτῳ, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του αρχιεπισκοπου ἡμων, τουδε, του τιμιου πρεσβυτεριου, της εν Χριστῳ διακονιας, παντος του κληρου και του λαου, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ των δουλων του Θεου, τουδε και τησδε, των νυν συναπτομενων αλληλοις εις γαμου κοινωνιαν, και της σωτηριας αυτων, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του ευλογηθηναι τον γαμον τουτον, ὡς τον εν Κανᾳ της Γαλιλαιας, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του παρασχεθηναι αυτοις σωφροσυνην, και καρπον κοιλιας, προς το συμφερον, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του ευφρανθηναι αυτους εν ὁρασει υἱων και θυγατερων, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του δωρηθηναι αυτοις ευτεκνιας απολαυσιν, και ακαταγνωστον διαγωγην, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του δωρηθηναι αυτοις τε και ἡμιν παντα τα προς σωτηριαν αιτηματα, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Ὑπερ του ῥυσθηναι αυτους τε και ἡμας απο πασης θλιψεως, οργης και αναγκης, του Κυριου δεηθωμεν.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Αντιλαβου, σωσον, ελεησον, και διαφυλαξον ἡμας, ὁ Θεος, τῃ σῃ χαριτι.

Ὁ χορος· Κυριε ελεησον.

Ὁ διακονος· Της παναγιας, αχραντου, ὑπερευλογημενης, ενδοξου, δεσποινης ἡμων, θεοτοκου, και αειπαρθενου Μαριας, μετα παντων των ἁγιων, μνημονευσαντες, ἑαυτους και αλληλους και πασαν την ζωην ἡμων, Χριστῳ τῳ Θεῳ παραθωμεθα.

Ὁ χορος· Σοι Κυριε.

Εκφωνως ὁ ἱερευς·

Ὁτι πρεπει σοι πασα δοξα, τιμη και προσκυνησις τῳ πατρι, και τῳ υἱῳ, και τῳ ἁγιῳ πνευματι, νυν και αει, και εις τους αιωνας των αιωνων.

Ὁ χορος· Αμην.

Ὁ διακονος· Του Κυριου δεηθωμεν.

Και ὁ ἱερευς μεγαλοφωνως την ευχην·

Ὁ Θεος, ὁ αχραντος και πασης κτισεως δημιουργος, ὁ την πλευραν του προπατορος Αδαμ δια την σην φιλανθρωπιαν εις γυναικα μεταμορφωσας, και ευλογησας αυτους και ειπων· Αυξανεσθε και πληθυνεσθε και κατακυριευσατε της γης· και αμφοτερους αυτους ἑν μελος αναδειξας δια της συζυγιας. ἑνεκεν γαρ τουτου καταλειψει ανθρωπος τον πατερα αυτου και την μητερα και προσκολληθησεται τῃ ἰδια γυναικι, και εσονται οἱ δυο εις σαρκα μιαν· και ους ὁ Θεος συνεζευξεν, ανθρωπος μη χωριζετω. Ὁ τον θεραποντα σου Αβρααμ ευλογησας και διανοιξας την μητραν Σαῤῥας, και πατερα πληθους εθνων ποιησας· ὁ τον Ισαακ τῃ Ῥεβεκκᾳ χαρισαμενος, και τον τοκον αυτης ευλογησας· ὁ τον Ιακωβ τῃ Ῥαχηλ συναψας, και εξ αυτου τους δωδεκα πατριαρχας αναδειξας· ὁ τον Ιωσηφ και την Ασηνεθ συζευξας, καρπον παιδοποιησας αυτοις τον Εφραιμ και τον Μανασσην χαρισαμενος· ὁ τον Ζαχαριαν και την Ελισαβετ προσδεξαμενος και προδρομον τον τοκον αυτοις αναδειξας· ὁ εκ της ῥιζης

Ιεσσαι, το κατα σαρκα, βλαστησας την αειπαρθενον, και εξ αυτης σαρκωθεις και τεχθεις εις σωτηριαν του γενους των ανθρωπων· ὁ δια την αφραστον σου δωρεαν και πολλην αγαθοτητα παραγενομενος εν Κανᾳ της Γαλιλαιας, και τον εκεισε γαμον ευλογησας, ἱνα φανερωσῃς, ὁτι σον θελημα εστιν ἡ εννομος συζυγια και ἡ εξ αυτης παιδοποιϊα. Αυτος, δεσποτα, παναγιε, προσδεξαι την δεησιν ἡμων των ἱκετων σου, ὡς εκεισε και ενταυθα παραγενομενος τῃ αορατῳ σου επιστασιᾳ· ευλογησον τον γαμον τουτον, και παρασχου τοις δουλοις σου τουτοις τῳ δεινι και τῃ δεινι, ζωην ειρηνικην, μακροημερευσιν, σωφροσυνην, την εις αλληλους αγαπην, εν τῳ συνδεσμῳ της ειρηνης, σπερμα μακροβιον, την επι τεκνοις χαριν, τον ἀμαραντινον της δοξης στεφανον. αξιωσον αυτους ιδειν τεκνα τεκνων· την κοιτην αυτων ανεπιβουλευτον διατηρησον· και δος αυτοις απο της δροσου του ουρανου ανωθεν και απο της πιοτητος της γης. εμπλησον τους οικους αυτων σιτου, οινου και ελαιου, και πασης αγαθοσυνης, ἱνα μεταδιδωσι και τοις χρειαν εχουσι, δωρουμενος ἁμα και τοις συμπαρουσι παντα τα προς σωτηριαν αιτηματα. ὁτι Θεος ελεους, οικτιρμων, και φιλανθρωπιας ὑπαρχεις, και σοι την δοξαν αναπεμπομεν συν τῳ αναρχῳ σου πατρι, και τῳ παναγιῳ και αγαθῳ και ζωοποιῳ σου πνευματι· νυν και αει, και εις τους αιωνας των αιωνων.

Ὁ χορος· Αμην.

Ὁ διακονος· Του Κυριου δεηθωμεν.

Και ὁ ἱερευς την ευχην·

Ευλογητος ει, Κυριε, ὁ Θεος ἡμων, ὁ του μυστικου και αχραντου γαμου ἱερουργος και του σωματικου νομοθετης, ὁ της αφθαρσιας φυλαξ, των βιωτικων αγαθος οικονομος· αυτος και νυν, δεσποτα, ὁ εν αρχῃ πλασας τον ανθρωπον, και θεμενος αυτον ὡς βασιλεα της κτισεως και ειπων, ου καλον ειναι τον ανθρωπον μονον επι της γης, ποιησωμεν αυτῳ βοηθον κατ' αυτον· και λαβων μιαν των πλευρων αυτου επλασας γυναικα, ἡν ιδων Αδαμ ειπε· τουτο νυν οστουν εκ των οστων μου· και σαρξ εκ της σαρκος μου αυτη κληθησεται γυνη, ὁτι εκ του ανδρος αυτης ελῃφθη αυτη· ἑνεκεν τουτου καταλειψει ανθρωπος τον πατερα αυτου και την μητερα, και προσκολληθησεται τῃ ιδιᾳ γυναικι, και εσονται οἱ δυο εις σαρκα μιαν. και ὁυς ὁ Θεος εζευξεν, ανθρωπος μη χωριζετω. αυτος και νυν, δεσποτα, Κυριε ὁ Θεος ἡμων, καταπεμψον την χαριν σου την επουρανιον επι τους δουλους σου τουτους, τον δεινα και την δεινα, και δος τῃ παιδισκῃ

ταυτῃ εν πασιν ὑποταγηναι τῳ ανδρι, και τον δουλον σου τουτον ειναι εις κεφαλην της γυναικος· ὁπως βιωσωσι κατα το θελημα σου, ευλογησον αυτους, Κυριε ὁ Θεος ἡμων, ὡς ευλογησας τον Αβρααμ και την Σαῤῥαν. ευλογησον αυτους, Κυριε ὁ Θεος ἡμων, ὡς ευλογησας τον Ισαακ και την Ρεβεκκαν. ευλογησον αυτους, Κυριε ὁ Θεος ἡμων, ὡς ευλογησας τον Ιακωβ και παντας τους πατριαρχας. ευλογησον αυτους, Κυριε ὁ Θεος ἡμων, ὡς ευλογησας τον Ιωσηφ και την Ασηνεθ. ευλογησον αυτους, Κυριε ὁ Θεος ἡμων, ὡς ευλογησας Μωσεα και Σεπφοραν. ευλογησον αυτους, Κυριε ὁ Θεος ἡμων, ὡς ευλογησας Ιωακειμ και την Ανναν. ευλογησον αυτους, Κυριε ὁ Θεος ἡμων, ὡς ευλογησας Ζαχαριαν και την Ελισαβετ. διαφυλαξον αυτους, Κυριε ὁ Θεος ἡμων, ὡς διεφυλαξας τον Νωε εν τῃ κιβωτῳ. διαφυλαξον αυτους, Κυριε ὁ Θεος ἡμων, ὡς διεφυλαξας τον Ιωναν εν τῃ κοιλιᾳ του κητους. διαφυλαξον αυτους, Κυριε ὁ Θεος ἡμων, ὡς διεφυλαξας τους ἁγιους τρεις παιδας εκ του πυρος, καταπεμψας αυτοις δροσον ουρανοθεν. ελθοι επ' αυτους ἡ χαρα εκεινη, ἡν εσχεν ἡ μακαρια Ἑλενη, ὁτε ευρε τον τιμιον σταυρον. μνημονευσον αυτων, Κυριε, ὁ Θεος ἡμων, ὡς εμνημονευσας του Ενωχ, του Σημ, και του Ηλια. μνημονευσον αυτων, Κυριε, ὁ Θεος ἡμων, ὰς εμνημονευσας των ἁγιων σου τεσσαρακοντα μαρτυρων, καταπεμψας αυτοις ουρανοθεν τους στεφανους. μνημονευσον, ὁ Θεος, και των αναθρεψαντων αυτους γονεων· ὁτι ευχαι γονεων στηριζουσι θεμελια οικων. μνημονευσον, Κυριε, ὁ Θεος ἡμων, των δουλων σου, των παρανυμφων, των συνελθοντων εις την χαραν ταυτην. μνημονευσον, Κυριε ὁ Θεος ἡμων του δουλου σου, τουδε, και της δουλης σου, τησδε. και ευλογησον αυτους. δος αυτοις καρπον κοιλιας, καλλιτεκνιαν, ὁμονοιαν ψυχων και σωματων· ὑψωσον αυτους, ὡς τας κεδρους του Λιβανου, ὡς αμπελον ευκληματουσαν. δωρησον αυτοις σπερμα σταχυος, ἱνα πασαν αυταρκειαν εχοντες περισσευσωσιν εις παν εργον αγαθον, και σοι ευαρεστον, και ιδωσιν υἱους των υἱων αυτων, ὡς νεοφυτα ελαιων, κυκλῳ της τραπεζης αυτων· και ευαρεστησαντες ενωπιον σου, λαμψουσιν ὡς φωστηρες εν ουρανῳ, εν σοι τῳ Κυριῳ ἡμων, μεθ' ού δοξα, κρατος, τιμη και προσκυνησις τῳ αναρχῳ σου πατρι και τῳ ζωοποιῳ σου πνευματι· νυν και αει, και εις τους αιωνας των αιωνων.

Ὁ χορος· Αμην.

Ὁ διακονος· Του Κυριου δεηθωμεν.

Και παλιν ὁ ἱερευς την ευχην εκφωνως·

Ὁ Θεος[b], ὁ ἁγιος, ὁ πλασας εκ χοος τον ανθρωπον και εκ της πλευρας αυτου ανοικοδομησας γυναικα, και συζευξας αυτῳ βοηθον κατ' αυτον, δια το ούτως αρεσαι τῃ σῃ μεγαλειοτητι, μη μονον ειναι τον ανθρωπον επι της γης· αυτος και νυν, δεσποτα, εξαποστειλον την χειρα σου εξ ἁγιου κατοικητηριου σου, και ἁρμοσον τον δουλον σου, τονδε, και την δουλην σου, τηνδε, ότι παρα σου ἁρμοζεται ανδρι γυνη. συζευξον αυτους εν ὁμοφροσυνῃ· στεφανωσον αυτους εις σαρκα μιαν· χαρισαι αυτοις καρπον κοιλιας, ευτεκνιας απολαυσιν. Ὅτι σον το κρατος, και σου εστιν ἡ βασιλεια και ἡ δυναμις και ἡ δοξα, του πατρος και του υἱου και του ἁγιου πνευματος· νυν και αει, και εις τους αιωνας των αιωνων.

Και μετα το αμην, λαβων ὁ ἱερευς τα στεφανα, στεφει πρωτον τον νυμφιον, λεγων· Στεφεται ὁ δουλος του Θεου, ὁ δεινα, την δουλην του Θεου, τηνδε, εις το ονομα του πατρος, και του υἱου, και του ἁγιου πνευματος.

Ειτα στεφει και την νυμφην, λεγων· Στεφεται ἡ δουλη του Θεου, ἡ δεινα, τον δουλον του Θεου, τον δεινα, εις το ονομα του πατρος και του υἱου και του ἁγιου πνευματος.

Ειτα ευλογει αυτους γ. λεγων εκ γ.

Κυριε, ὁ Θεος ἡμων δοξῃ και τιμῃ στεφανωσον αυτους.

Ειτα το προκειμενον του Αποστολου. ηχος πλ. δ.

Εθηκας επι την κεφαλην αυτων στεφανους εκ λιθων τιμιων· ζωην ᾐτησαντο σε, και εδωκας αυτοις.

Ὁ αποστολος. Προς Εφεσιους επιστολης Παυλου το αναγνωσμα·

Αδελφοι, ευχαριστειτε παντοτε ὑπερ παντων εν ονοματι του Κυριου ἡμων Ιησου Χριστου τῳ Θεῳ και πατρι. Και τα ἑξης. Τελος· πλην και ὑμεις οἱ καθ' ἑνα, ἑκαστος την ἑαυτου γυναικα ούτως αγαπατω ὡς ἑαυτον· ἡ δε γυνη, ἱνα φοβηται τον ανδρα. Αλληλουϊα. ηχ. πλ. α΄. Συ, Κυριε, φυλαξαις ἡμας και διατηρησαις.

Ευαγγελιον εκ του κατα Ιωαννην·

Τῳ καιρῳ εκεινῳ· γαμος εγενετο εν Κανᾳ της Γαλιλαιας, και ην ἡ μητηρ του Ιησου εκει· εκληθη δε και ὁ Ιησους και οἱ μαθηται

[b] All the parts of the Office preceding this prayer are omitted in the Office in Bigamos.

αυτου εις τον γαμον. Και τα έξης, έως του· Ταυτην εποιησε την αρχην των σημειων ὁ Ιησους εν Κανᾳ της Γαλιλαιας, και εφανερωσε την δοξαν αυτου, και επιστευσαν εις αυτον οἱ μαθηται αυτου.

Ὁ διακονος· Ειπωμεν παντες εξ ὁλης της ψυχης.

Κυριε, παντοκρατορ, ὁ Θεος των πατερων ἡμων.

Ελεησον ἡμας ὁ Θεος, κατα το μεγα ελεος σου.

Ετι δεομεθα ὑπερ ελεους, ζωης, ειρηνης, ὑγιειας, σωτηριας, επισκεψεως.

Και μνημονευει, ὡν θελει.

Ειτα ὁ ἱερευς εκφωνως·

Ὁτι ελεημων και φιλανθρωπος Θεος ὑπαρχεις και σοι την δοξαν αναπεμπομεν, τῳ πατρι και τῳ υἱῳ και τῳ ἁγιῳ πνευματι, νυν και αει και εις τους αιωνας των αιωνων.

Ειτα ὁ διακονος· Του Κυριου δεηθωμεν.

Και ὁ ἱερευς την ευχην·

Κυριε ὁ Θεος ἡμων, ὁ εν τῃ σωτηριωδει σου οικονομιᾳ καταξιωσας εν Κανᾳ της Γαλιλαιας τιμιον αναδειξαι τον γαμον δια της σης παρουσιας· αυτος και νυν τους δουλους σου, τον δεινα και την δεινα, ὁυς ευδοκησας συναφθηναι αλληλοις, εν ειρηνῃ και ὁμονοιᾳ διαφυλαξον, τιμιον αυτοις τον γαμον αναδειξον, αμιαντον αυτων την κοιτην διατηρησον, ακηλιδωτον αυτων την συμβιωσιν διαμειναι ευδοκησον· και καταξιωσον αυτους εν γηρᾳ πιονι καταντησαι, εν καθαρᾳ τῃ καρδιᾳ εργαζομενους τας εντολας σου. συ γαρ ει ὁ Θεος ἡμων, Θεος του ελεειν και σωζειν, και σοι την δοξαν αναπεμπομεν, συν τῳ αναρχῳ σου πατρι, και τῳ παναγιῳ και αγαθῳ και ζωοποιῳ σου πνευματι· νυν και αει και εις τους αιωνας των αιωνων.

Ὁ χορος· Αμην.

Ὁ διακονος· Αντιλαβου, σωσον, ελεησον.

Την ἡμεραν πασαν τελειαν, ἁγιαν.

" Αγγελον ειρηνης, πιστον, ὁδηγον[c]."

Συγγνωμην και αφεσιν των ἁμαρτιων.

Τα καλα και συμφεροντα ταις ψυχαις.

Τον ὑπολοιπον χρονον της ζωης[d].

Την ἑνοτητα της πιστεως.

Εκφωνως ὁ ἱερευς·

[c] Omitted in the Office in Bigamos.

[d] The Office in Bigamos adds the versicle Χριστιανα τα τελη της.

Και καταξιωσον ἡμας, δεσποτα, μετα παῤῥησιας "ακατακριτως τολμαν επικαλεισθαι σε, τον επουρανιον Θεον πατερα, και λεγειν[e]·"

Και ὁ λαος, το· Πατερ ἡμων ὁ εν τοις ουρανοις.

Εκφωνως ὁ ἱερευς· Ὁτι σου εστιν ἡ βασιλεια, και ἡ δυναμις και ἡ δοξα του πατρος και του υἱου και του ἁγιου πνευματος, νυν και αει και εις τους αιωνας των αιωνων.

Ὁ χορος· Αμην.

Ὁ ἱερευς· Ειρηνη πασι.

Ὁ διακονος· Τας κεφαλας ὑμων τῳ Κυριῳ κλινατε.

Ειτα προσφερεται το κοινον ποτηριον, και ευλογει αυτο ὁ ἱερευς· και λεγει την ευχην ταυτην.

Ὁ διακονος· Του Κυριου δεηθωμεν.

Ὁ Θεος, ὁ παντα ποιησας τῃ ισχυϊ σου, και στερεωσας την οικουμενην, και κοσμησας τον στεφανον παντων των πεποιημενων ὑπο σου· και το ποτηριον το κοινον τουτο, παρεχομενος τοις συναφθεισι προς γαμου κοινωνιαν, ευλογησον ευλογια πνευματικῃ.

Εκφωνως·

Ὁτι ευλογηται σου το ονομα και δεδοξασται σου ἡ βασιλεια, του πατρος και του υἱου και του ἁγιου πνευματος, νυν και αει και εις τους αιωνας των αιωνων.

Ειτα λαβων ὁ ἱερευς επι χειρας το κοινον ποτηριον, μεταδιδωσιν αυτοις εκ γ. πρωτον τῳ ανδρι, και αυθις τῃ γυναικι. Και ευθεως λαβων αυτους ὁ ἱερευς, "του συντεκνου κρατουντος οπισθεν τους στεφανους[e]," στρεφει ὡς εν σχηματι κυκλου· και ψαλλει ὁ ἱερευς η ὁ λαος τα παροντα τροπαρια εις ηχον πλ. α.

Ησαια χορευε. Ἡ παρθενος εσχεν εν γαστρι, και τεκεν υἱον τον Εμμανουηλ, Θεον τε και ανθρωπον· ανατολη ονομα αυτῳ· ὁν μεγαλυνοντες την παρθενον μακαριζομεν.

Ἑτερα ηχος βαρυς·

Ἁγιοι μαρτυρες, οἱ καλως αθλησαντες και στεφανωθεντες, πρεσβευσατε προς Κυριον, ελεηθηναι τας ψυχας ὑμων·

Δοξα σοι, Χριστε, ὁ Θεος, αποστολων καυχημα, μαρτυρων αγαλλιαμα· ὡν το κηρυγμα, τριας ἡ ὁμοουσιος.

Ειτα επαιρει τους στεφανους, και επαρας τον στεφανον του νυμφιου, λεγει·

[e] Omitted in the Office in Bigamos.

Μεγαλυνθητι νυμφιε, ὡς Αβρααμ, και ευλογηθητι ὡς ὁ Ισαακ, και πληθυνθητι ὡς ὁ Ιακωβ, πορευομενος εν ειρηνῃ και εργαζομενος εν δικαιοσυνῃ τας εντολας του Θεου.

Και εν τῳ της νυμφης, λεγει·

Και συ, νυμφη, μεγαλυνθητι, ὡς ἡ Σαῤῥα· και ευφρανθητι, ὡς ἡ Ρεβεκκα· και πληθυνθητι ὡς ἡ Ραχηλ· ευφραινομενη τῳ ιδιῳ ανδρι, φυλαττουσα τους ορους του νομου, ὁτι οὑτως ευδοκησεν ὁ Θεος.

Ειτα λεγει ὁ διακονος· Του Κυριου δεηθωμεν.

Και ὁ ἱερευς την ευχην.

Ὁ Θεος, ὁ Θεος ἡμων, ὁ παραγενομενος εν Κανᾳ της Γαλιλαιας και τον εκεισε γαμον ευλογησας, ευλογησον και τους δουλους σου τουτους, τους τῃ σῃ προνοιᾳ προς γαμου κοινωνιαν συναφθεντας· ευλογησον αυτων εισοδους και εξοδους· πληθυνον εν αγαθοις την ζωην αυτων· αναλαβε τους στεφανους αυτων εν τῃ βασιλειᾳ σου, ασπιλους και αμωμους και ανεπιβουλευτους διατηρων, εις τους αιωνας των αιωνων.

Ὁ χορος· Αμην.

Ὁ ἱερευς· Ειρηνη πασι.

Ὁ διακονος· Τας κεφαλας ὑμων τῳ Κυριῳ κλινατε.

Και ευχεται ὁ ἱερευς·

Ὁ πατηρ, ὁ υἱος, και το ἁγιον πνευμα, ἡ παναγια και ὁμοουσιος και ζωαρχικη τριας, ἡ μια θεοτης και βασιλεια, ευλογησαι ὑμας και παρασχοι ὑμιν μακροζωϊαν, ευτεκνιαν, προκοπην βιου και πιστεως, και εμπλησαι ὑμας παντων των επι γης αγαθων· αξιωσον ὑμας και των επηγγελμενων αγαθων της απολαυσεως, πρεσβειαις της ἁγιας θεοτοκου και παντων των ἁγιων. Αμην.

Ειτα εισερχεται. και ευχονται αυτοις, και ασπασαμενοι αλληλους, γινεται παρα του ἱερεως τελεια απολυσις.

Ὁ δια της εν Κανᾳ επιδημιας τιμιον αναδειξας τον γαμον, Χριστος ὁ αληθινος Θεος ἡμων, ταις πρεσβειαις της παναχραντου αυτου μητρος, των ἁγιων, ενδοξων και πανευφημων Αποστολων, των ἁγιων, θεοσεπτων βασιλεων και ισαποστολων, Κωνσταντινου και Ἑλενης, του ἁγιου μεγαλομαρτυρος Προσκοπιου, και παντων των ἁγιων, ελεησαι και σωσαι ἡμας.

(c) Ευχη επι λυσιν στεφανων τῃ ογδοῃ ἡμερᾳ.

Κυριε, ὁ Θεος ἡμων, ὁ του ενιαυτου τον στεφανον ευλογησας και

τους παροντας στεφανους επιτιθεσθαι παραδους τοις νομῳ γαμου συναπτομενοις αλληλοις, και μισθον ὡσπερ απονεμων αυτοις τον της σωφροσυνης, ὁτι ἁγνοι προς τον ὑπο σου νομοθετηθεντα γαμον συνηφθησαν· αυτος και εν τῃ λυσει των παροντων στεφανων τους συναφθεντας αλληλοις ευλογησον, και συναφειαν αυτων αδιασπαστον διατηρησον· ἱνα ευχαριστωσι διαπαντος τῳ παναγιῳ ονοματι σου του πατρος και του υἱου και του ἁγιου πνευματος, νυν και αει και εις τους αιωνας των αιωνων. Αμην.

Ειρηνη πασι. Τας κεφαλας ὑμων τῳ Κυριῳ κλινατε.

Συμφωνα καταντησαντες οἱ δουλοι σου, Κυριε, και την ακολουθιαν εκτελεσαντες του εν Κανᾳ γαμου της Γαλιλαιας και συστελλοντες τα κατ' αυτον συμβολα, δοξαν σοι αναπεμπομεν τῳ πατρι και τῳ υἱῳ και τῳ ἁγιῳ πνευματι, νυν και αει και εις τους αιωνας των αιωνων. Αμην.

Και γινεται απολυσις.

(The MSS. Cryptofer. Bessarion. Barberin. 2. contain only the prayer: and for this the Barberin. 2. substitutes the following form:)

Ευλογητος ει Κυριε, ὁ Θεος ἡμων, ὁ ευλογησας ἡμας ευλογιᾳ σου τῃ ἁγιᾳ και καταξιωσας ἡμας εισελθειν εις τον νυμφωνα των δουλων σου, ὁ, και ὁ. στηριξον αυτους του φοβεισθαι το ονομα σου το ἁγιον πασας τας ἡμερας της ζωης αυτων· ὁτι σε εποθησαν, Κυριε των δυναμεων, και σε επικαλουμεθα συνελθειν μεθ' ἡμων, και ευλογησαι τον γαμον τουτον καθως ηυλογησας τον γαμον τον εν Κανᾳ της Γαλιλαιας. την ειρηνην και την χαριν σου παρασχου αυτοις, ἁμα τοις παρανυμφοις, και πασι τοις συνελθουσιν αυτοις και συνευδοκουσιν εν ταυτῃ τῃ θεἰκῃ νομοθεσιᾳ, πασι χαριζομενος τα προς σωτηριαν αιτηματα. Ὁτι πρεπει σοι πασα δοξα, και τα ἑξης.

(d) Ακολουθια εις διγαμους.

(The Eastern Church, holding second marriages to be chargeable with incontinence, does not admit the parties to any sacred rites without a previous discipline of prayer and fasting. The Office for the use of the Digami is compiled from the Offices επι μνηστροις and του στεφανωματος. The principal variations have been marked in the notes upon those Offices.

2. *Ancient Offices of the Latin Church.*

(a) From the Sacramentarium Leonianum "*ad Sancti Felicis III. tempora* (q. d. A. D. 526.) *referendum.*" Muratori.

Incipit velatio nuptialis.

Exaudi nos omnipotens et misericors Deus, ut quod nostro ministratur officio, tuâ benedictione potius impleatur. Per etc.

Suscipe, Domine, quæsumus pro sacrâ lege conjugii munus oblatum; et cujus creator es operis, esto dispositor. Per etc.

Hanc igitur oblationem famulæ tuæ (*illius*) quam tibi offerimus pro famulâ tuâ (*illâ*) quæsumus, Domine, placatus aspicias. Pro quâ majestatem tuam supplices exoramus, ut sicut eam ad ætatem nuptiis congruentem pervenire tribuisti, sic consortio maritali tuo munere copulatam, desideratâ sobole gaudere perficias[g] atque ad optatam seriem cum suo conjuge provehas benignus annorum[h]. Per etc.

Quæsumus, omnipotens Deus instituta providentiæ tuæ pio favore[i] comitare, et[k] quos legitimâ societate connectis, longævâ pace custodi[l]. Per etc.

Adesto, Domine, supplicationibus nostris et institutis tuis, quibus propagationem humani generis ordinasti, benignus assiste; ut quod te auctore jungitur, te auxiliante, servetur. Per etc.

Pater, mundi conditor, nascentium genitor, multiplicandæ originis institutor, qui Adæ comitem tuis manibus addidisti, cujus ex ossibus ossa crescentia parem formam admirabili diversitate signarent; hinc ad totius multitudinis incrementum, conjugalis thori jussa consortia, quo totum inter se sæculum colligarent, humani generis fœdera nexuerunt. Sic enim "tibi placitum necessario[m], ut quia longe

[g] proficias. *Sacr. Gelas.* [h] annorum: diesque nostros. *Sacr. Gelas.* [i] amore. *Sacr. Greg.* [k] ut. *Sacr. Greg.* [l] custodias. *Sacr. Greg.* [m] tibi, Domine placitum, sic necessario. *Sacr. Gelas.*

esset[n] infirmius, quod "homini simile, quam[o] quod tibi Deo feceras, additus fortiori sexus infirmior, "unum efficeret[p] ex duobus, et pari pignore soboles mixta "manaret; dum[q] per ordinem fluëret digesta posteritas, ac priores ventura sequerentur, nec ullum sibi finem in tam brevi termino, quamvis "esset caduca posteritas[r]. Ad hæc igitur venturæ[s] hujus famulæ tuæ Pater, rudimenta sanctifica: ut bono et prospero sociata consortio, legis æternæ jura[t] custodiat. Memineritque se Domine non tantum ad licentiam conjugalem sed ad observantiam "Dei sanctorumque pignorum custodiæ delegatam[u]. Fidelis et casta nubat in Christo, imitatrixque sanctarum permaneat fœminarum. Sit amabilis, ut Rachel, viro; sapiens, ut Rebecca; longæva et fidelis, ut Sarra. Nihil "ex hâc subcisivus[x] ille auctor prævaricationis usurpet: nixa[y] fidei mandatisque "permaneat. Muniat[z] infirmitatem suam robore disciplinæ. Uni thoro juncta contactus "vitet illicitos[a]. Sit verecundiâ[b] gravis; pudore venerabilis; doctrinis cælestibus erudita. Sit fœcunda in sobole; sit probata et innocens, et ad Beatorum requiem atque[c] ad cælestia regna perveniat[d]. Per etc.

(b) From the Sacramentarium Gelasianum: "*illum jure merito Morinus annum septingesimum antecedere conjicit.*" Thomasius.

Incipit Actio Nuptialis.

Adesto Domine supplicationibus nostris (*etc. secundum Sacr. Leonian.*)

[n] est et. *Sacr. Gelas.* [o] quod hominem similem quem. *Sacr. Gelas.* [p] ut unum efficeris. *Sacr. Gelas.* [q] maneret: tunc. *Sacr. Gelas.* [r] essent c. proponerent. *Sacr. Gelas.* [s] datæ sint leges instituta venturæ: quapropter. *Sacr. Gelas.* [t] jussa. *Sacr. Gelas.* [u] fidei sanctorum pignorum deligatam. *Sacr. Gelas.* [x] in ea ex actibus suis. *Sacr. Greg. Ordo Rom.* [y] nexa. *Sacr. Gelas. Greg.* [z] permaneat fœminarum, serviens Deo vero: devota muniat. *Sacr. Gelas.* permaneat uni thoro juncta. *Sacr. Greg. Ordo Rom.* [a] vitæ illicitos fugiat. *Sacr. Gelas.* contactus illicitos fugiat: muniat infirmitatem suam robore disciplinæ. *Sacr. Greg. Ordo Rom.* [b] Verecunda. *Sacr. Gelas. Greg.* [c] usque *Sacr. Gelas.* [d] perveniat. Et videat (ut videant. *Or. Rom.*) filios suos usque in tertiam et quartam progeniem et ad optatam perveniat senectutem. Per Dominum nostrum etc. *Sacr. Greg.*

Quæsumus, omnipotens Deus (*etc. sec. Sacr. Leonian.*)

Secreta.

Adesto, Domine, supplicationibus nostris et hanc oblationem famularum tuarum *Illarum*, quam tibi offerunt pro famula tua *Illa* quam ad statum maturitatis et ad diem nuptiarum perducere dignatus es, placidus ac benignus assume, ut quod tua dispositione expeditur, tuâ gratiâ compleatur. Per.

Deus, qui fœdera nuptiarum blando concordiæ jugo et insolubili pacis vinculo nexuisti, ut multiplicandis adoptionum filiis sanctorum connubiorum fœcunditas pudica serviret[e]. Tua enim, Domine, providentia tuaque gratia ineffabilibus modis utrumque dispensat: ut quod generatio ad mundi edidit ornatum[f]; regeneratio ad Ecclesiæ perducat augmentum[g].

Infra Actionem.

Hanc igitur oblationem famularum tuarum *illi et illas*, quam tibi offerunt pro famulâ tuâ illâ, quæsumus, Domine, placatus accipias, pro quâ majestatem tuam (*etc. sec. Sacr. Leon.*)

Infra Actionem.

Ad Tre. vel Annualem Nupt.

Hanc igitur oblationem, Domine, famulorum tuorum *Illi et Illas*, quam tibi offerunt ob diem trigesimum conjunctionis suæ *vel* annualem, quo die illos jugali vinculo sociare dignatus es; placatus suscipias, deprecamur: ob hoc igitur reddunt tibi vota sua Deo vero et vivo, pro quibus tremendæ pietati tuæ supplices fundimus preces, ut pariter bene et pacifici senescant et videant filios filiorum suorum usque in tertiam et quartam progeniem, et te benedicant omnibus diebus vitæ suæ. Per Christum Dominum nostrum. Quam oblationem, tu, Deus.

Percompleis Canonem plenariam: et dicis orationem Dominicam, et sic eam benedicis his verbis.

[e] servaretur. *Sacr. Greg.* [f] ornamentum. *Sacr. Greg.* [g] augmentum. Et ideo cum angelis etc. *Sacr. Greg.*

Incipit Oratio.

Deus, qui mundi crescentis exordio multiplicatâ prole benedicis, propitiare supplicationibus nostris, et super hanc famulam tuam opem tuæ benedictionis infunde; ut in jugali consortio, affectu compari, mente consimili, sanctitate mutuâ copulentur. Per.

Incipit Benedictio.

Pater, mundi conditor, nascentium genitor (*etc. sec. Sacr. Leon.*)

Post hæc dicis Pax vobiscum. *Et sic eos communicas: Deinde postea quam communicaverint, dicis super eos Bened. his verbis:*

Domine sancte, Pater omnipotens, æterne Deus, iteratis precibus te supplices exoramus, pro quibus apud te supplicator est Christus; conjunctiones famulorum tuorum fovere digneris: benedictiones tuas excipere mereantur, et filiorum successibus fœcundentur: nuptias eorum, sicuti primi hominis confirmare dignere. Avertantur ab eis inimici omnes insidiæ, ut sanctitatem patrum etiam in ipso conjugio imitentur, qui providentiâ tuâ, Domine, conjungi meruerunt. Per.

Item post Commun.

Exaudi nos, Domine sancte, Pater omnipotens, æterne Deus, ut quod nostro ministratur officio (*etc. sec. Sacr. Leon.*)

(c) From the Sacramentarium Gregorianum: (compiled by Gregory the Great, (q. d. A. D. 590.) but afterwards interpolated. The MS. used by Muratori is of the ninth century.

Oratio ad Sponsas benedicendas.

Exaudi nos omnipotens et misericors Deus, (*etc. sec. Sacr. Leon.*)

Super oblata.

Suscipe, quæsumus, Domine, pro sacra connubii lege munus oblatum, et cujus largitor es, operis[h] esto dispositor. Per etc.

[h] opis. *Ordo Rom.*

Præfatio.

Vere dignum et justum est, æquum et salutare. Qui fœdera nuptiarum blando concordiæ jugo, (*etc. sec. Sacr. Gelas.*)

Hanc igitur oblationem famulorum tuorum, quam tibi offerunt pro famulâ tuâ (illâ) quam perducere dignatus es ad statum mensuræ et ad diem nuptiarum, pro quâ majestati tuæ fundimus supplices preces, ut eam propitius cum viro suo copulare digneris; quæsumus, Domine, ut placatus aspicias, etc.

Antequam dicatur: Pax Domini, dicat hanc orationem.

Propitiare Domine, supplicationibus nostris et institutis tuis (*etc. sec. Sacr. Leon.*)

Benedictio.

Deus, qui potestate virtutis tuæ, de nihilo cuncta fecisti, qui dispositis universitatis exordiis, homini, ad imaginem Dei facto, ideo inseparabile mulieris adjutorium condidisti, ut fœmineo corpori de virili dares carne principium, docens, quod ex uno placuisset institui, nunquam licere disjungi: Deus, qui tam excellenti mysterio conjugalem copulam consecrasti, ut Christi et Ecclesiæ sacramentum præsignares in fœdere nuptiarum; Deus per quem mulier jungitur viro et societas principaliter ordinata ea benedictione donatur, quæ sola nec per originalis peccati pœnam nec per diluvii est abluta[i] sententiam; respice, propitius, super hanc[k] famulam tuam, quæ[l] maritali jungenda est consortio. Tua se expetit protectione muniri. Sit in ea[m] jugum dilectionis et pacis fidelis et casta nubat in Christo, imitatrixque sanctarum permaneat fœminarum, (*etc. sec. Sacr. Leon. Gelas.*)

Pax Domini sit semper vobiscum.

Ad complendum.

Quæsumus omnipotens Deus instituta providentiæ tuæ, (*etc.* as in *Sacr. Leon. Gelas.*)

[i] ablata. *Ord. Rom.* [k] hunc famulum tuum et hanc. *Ordo Rom.* [l] qui . . . jungendi sunt . . . expetunt. *Ordo Rom.* [m] Sit ergo, Domine, in hac famulâ tua. *Ordo Rom.*

(d) From the Sacramentarium Gallicanum: "*conscriptum sub Pippino vel sub Karolo M. Francorum Regibus . . atque adeo ante Annum Ch. octingentesimum.*" Muratori.

Benedictio thalami super nubentes.

Deum, qui ad multiplicandam humani generis prolem benedictionis suæ dona largiri dignatus est, fratres carissimi, deprecemur, ut hos famulos suos *ill.* et *ill.* quos ad conjugalem copulam ipse præelegit, ipse custodiat. Det eis sensus pacificos, pares animos, mores mutuâ caritate devinctos. Habeant quoque optatas ejus munere soboles, qua sicut donum ipsius tribuit, ita ipsius benedictione consequantur, ut hi famoli sui ill. et ill. in omni idem cordis humilitate deserviant. Per.

Item alia.

Te deprecamur, Domine sancte, Pater omnipotens, æterne Deus, super hos famolos tuos ill. et ill. quos ad gratiam conjugii venire jussisti, qui per nostram licet precem aut vocem benedictionem tuam desiderant. Tribue eis, Domine, fidele consortium caritatis. Induant caritatem Sarræ, pœnitentiam Rebeccæ, amorem Rachel, gratiam et caritatem Susannæ. Descendat super hos famolos tuos ill. et ill. sicut descendit ros pluviæ super faciem terræ; manus tuæ sentiant actum, et Spiritus Sancti tui percipiant gaudium sempiternum.

Oratio super eos qui secundo nubunt.

Antiphona. Benedictio Domini super vos.
Beati omnes.

Deus, qui multimoda subsidiorum remedia fragilitati humanæ beneficia confers et tribuis incrementum, ut natura non defrandetur a semine, per quod geminata propago crescat in progenies. Sic temporibus priscis Ruth Moabitem benedixisti, sic in novissimis per apostolum tuum secunda matrimonia concessisti. Da eis ergo Domine, famolis tuis procreandorum filiorum unianime desiderium, ut faciat Dominus hanc mulierem ill. quæ ingreditur in domum tuam, sicut Rachel et Lia, quæ ædificaverunt domum Israel, et sit exemplum virtutis in Ecclesiâ Dei. Per.

(e) From the Ordo Romanus: "*a magistris Romanæ ecclesiæ tum conscriptum, cum Stephano Pontifice et Pipino primum, deinde Carolo magno procurante, divina officia Romana cum Romano cantu in Galliam sunt introducta.* Hittorpius.

Oratio ad benedicendam sponsam.

Postquam fuerit mulier viro desponsata et legaliter dotata, introeat cum marito ecclesiam, et prostratis eis, dicat:

Propitiare Domine, supplicationibus nostris, (*etc. sec. Sacr. Leon. Greg.*)

Deus, qui potestati virtutis tuæ de nihilo cuncta fecisti, (*etc. sec. Sacr. Greg.*)

Quæsumus, omnipotens Deus, instituta providentiæ tuæ, (*etc. sec. Sacr. Greg.*)

Deus Abraham, Deus Isaac, Deus Jacob, benedic adolescentes istos et semina semen æternæ vitæ in mentibus eorum, ut quicquid pro utilitate suâ didicerint, hoc facere cupiant, per Jesum Christum recuperatorem hominum, filium tuum unigenitum, qui tecum et cum Spiritu Sancto vivit et regnat.

Exaudi nos, omnipotens et misericors Deus, (*etc. sec. Sacr. Leon.*)

Epistola.

Fratres; nescitis, quoniam corpora vestra membra sunt Christi.

Evangelium.

Loquebatur Jesus cum discipulis suis in parabolis, dicens: Simile factum est regnum cœlorum. Require in Dominica 21 Pentecost.

Secreta.

Suscipe, Domine pro sacra connubii lege, (*etc. sec. Sacr. Greg.*)

In fractione.

Hanc igitur oblationem famulorum tuorum, (*etc. sec. Sacr. Greg.*)

Post Communionem.

Gratiæ tuæ, quæsumus, Domine, famulo tuo et famulæ

tuæ legaliter copulatis tribue largitatem, ut mandata tua, te miserante, sectantes consolationem præsentis vitæ percipiant et futuræ. Per.

3. From the Missale secundum consuetudinem ac ritum insignis ecclesiæ Sarisburiensis: *ascribed to Osmond, a Norman, and Bishop of Salisbury*, A. D. 1099. but in the Paris edition manifestly interpolated. The principal variations in the York Missal are marked in the notes from Selden.

De modo solennizandi sponsalia.

Statuantur vir et mulier ante ostium ecclesiæ, sive in faciem ecclesiæ coram Deo et sacerdote et populo: vir autem stet a dextris mulieris; mulier autem a sinistris viri: causa est: quia formata est ex costa sinistri lateris Adæ. Tunc sacerdos interroget banna, et postea dicat in linguâ materna; cunctis audientibus.

Ecce convenimus hic, fratres, coram Deo et angelis ejus et omnibus sanctis, in facie ecclesiæ: ad conjungendum duo corpora: scilicet hujus viri et hujus mulieris. *Hic respiciat sacerdos personas suas:* ut amodo sint unum corpus et duæ animæ sint ad promerendam simul vitam æternam. Et quicquid antehac fuerint. *Hic fiat admonitio ad populum in linguâ maternâ, sic.* Admoneo vos omnes per Patrem et Filium, et Spiritum Sanctum; ut si quis ex vobis est, qui sciat aliquid, quare isti adolescentes legitime contrahere non possunt, modo confiteatur: *Eadem monitio fiat ad virum et mulierem, ut si quid ab illis actum fuerit occulte, vel si quid devoverint, vel aliquo modo de se noverint, quare legitime contrahere non possint, tunc confiteantur. Si vero aliquis impedimentum aliquod proponere voluerit et ad hoc probandum cautionem præstiterit: differantur sponsalia donec rei veritas cognoscatur. Si vero nullus impedimentum proponere voluerit, interroget sacerdos dotem mulieris.*

Non fidet sacerdos, neque consentiat ad fidationem, inter virum et mulierem ante tertium edictum bannorum: et

banna debent interrogari per tres dies solennes et disjunctos: ita ut inter unumquemque diem solennem cadat ad minus una dies ferialis. Post hæc dicat sacerdos ad virum cunctis audientibus in lingua maternâ: N. Vis[n] habere hanc mulierem in sponsam et eam diligere et honorare, tenere et custodire, sanam et infirmam, et sicut sponsus debet sponsam: et omnes alias propter eam dimittere et illi soli adhærere, quamdiu vita utriusque duraverit? *Respondeat:* Volo. *Item sacerdos ad mulierem:* N. Vis° habere hunc virum in sponsum, et illi obedire et servire, et eum diligere et honorare, ac custodire sanum et infirmum, sicut sponsa debet sponsum; et omnes alios propter eum dimittere, et illi soli adhærere, quamdiu vita utriusque vestrûm duraverit? *Respondeat:* Volo. *Deinde detur femina a patre suo vel ab amico; quæ si puella est, discooperiam habeat manum, si vidua, tectam: quam vir recipiat in Dei fide et suâ servandam, sicut vovit coram sacerdote: et teneat eam per manum dexteram in manu suâ dexterâ. Et sic vir det fidem mulieri per verba de præsenti, ita dicens, sacerdote docente:* I[p] *N.* take the *N.* to my weddyd wyf, to have and to hold fro thys day forwarde, for better for wors, for richer for porer, in sikenesse and in helthe, tyl deth us departe, yf holy Chyrche wyl it ordeyne; and therto I plyght the my trouthe. *Manum retrahendo. Deinde dicat mulier, sacerdote docente:* I *N.* take the *N.* to my weddyd husbonde, to have and to hold fro thys day forwarde, for better for wurs, for richere, for porer, in sikenesse and in helthe, to be honour and buxum in bed and at bord, tyll deth us

[n] N. Wilt thou have this woman to thy wife, and love her and keep her in siknes and in helthe, and in all other degrese be to her as a husbande sholde be to his wife, and all other forsake for her, and holde the only to her to thy live's ende?

N. Wilt thou have this man to thy husbande, and to be buxum to him, serve him and kepe him in syknes and in helthe, etc.

[p] Here I N. take the N. to my wedded wife, to have and to hold at bedde and at borde, for fairer for fouler, for better for warse, in sekenes and in hele, tyl dethe us depart. And thereto I plyght the my trouthe.

departe, yf holy Chyrche wyl it ordeyne: and therto I plyght the my trouth. *Manum retrahendo. Deinde ponat vir aurum vel argentum et anulum super scutum vel librum: et tunc quærat sacerdos, si anulus fuerit antea benedictus vel non: si dicatur, quod non:* tunc benedicat sacerdos anulum hoc modo. Dominus vobiscum. Et cum Spiritu tuo. Oremus.

Creator et conservator humani generis, dator gratiæ spiritualis, largitor æternæ salutis, tu Domine, mitte bene+dictionem tuam super hunc anulum; ut quæ illum gestaverit, sit armata virtute cœlestis defensionis, et proficiat illi ad æternam salutem: per Christum Dominum nostrum. *R.* Amen. Oremus.

Benedic, Domine, hunc anulum, quem nos in tuo sancto nomine benedicimus, ut quicunque eum portaverit, in tuâ pace consistat, et in tuâ voluntate permaneat, et in amore tuo vivat, et crescat, et senescat, et multiplicetur in longitudinem dierum. Per.

Tunc aspergatur aqua benedicta super anulum. Si autem antea fuerit anulus ille benedictus: tunc statim postquam vir posuerit anulum super librum: accipiens sacerdos anulum tradat ipsum viro, quem vir accipiat manu suâ dexterâ, eum tribus principalibus digitis, et manu suâ sinistrâ tenens dexteram sponsæ, docente sacerdote, dicat: With this ryng I the wedde, and thys gold and sylver I the gyve, and with my body I the worshyp, and with all my worldly catell I the honore. *Et tunc inserat sponsus anulum pollici sponsæ, dicens:* In nomine Patris: *ad secundum digitum:* et Filii: *ad tertium digitum:* et Spiritus Sancti: *ad quartum digitum;* Amen. *Et ibi dimittat eum . . . quia in illo digito est quædam vena procedens usque ad cor, et in sonoritate argenti designatur interna dilectio, quæ inter eos semper debet esse recens: Tunc inclinatis capitibus eorum, dicat sacerdos benedictionem super eos:* Benedicti sitis a Domino,

q With this ring I wedde the, and with this gold and silver I honoure the, and with this gyft I honoure the.

qui fecit mundum ex nihilo. *Respondetur:* Amen. *Tunc dicatur iste Psalmus:*

Manda Deus virtuti tuæ: confirma hoc, Deus, quod operatus es in nobis.

A templo tuo, quod est in Hierusalem: tibi offerent reges munera.

Increpa feras arundinis, congregatio taurorum in vaccis populorum: ut excludant eos, qui probati sunt argento.

Gloria Patri. Sicut erat in.

Kyrie eleyson. Christe eleyson. Kyrie eleyson.

Pater noster. Et ne inducas in tentationem, sed libera nos a malo. Benedicamus Patrem et Filium cum Sancto Spiritu. Laudemus et superexaltemus eum in secula. Laudemus Dominum, quem laudant angeli: quem cherubin et seraphin sanctus, sanctus, sanctus proclamant. Domine exaudi: Et clamor. Dominus vobiscum; Et cum Spiritu tuo. Oremus. *Oratio.*

Deus Abraham, Deus Isaac, Deus Jacob, sit vobiscum, et ipse vos conjungat, impleatque benedictionem suam in vobis, Qui vivit et regnat Deus per omnia secula seculorum. Amen. *Alia oratio cum* Oremus.

Bene + dicat vos, Deus pater, custodiat vos Jesus Christus, illuminet vos Spiritus Sanctus, ostendatque Dominus faciem suam in vobis et misereatur vestri; convertat vultum suum ad vos, et det vobis pacem: impleatque vos omni benedictione spirituali, in remissionem peccatorum vestrorum: ut habeatis vitam æternam, et vivatis in secula seculorum. *R.* Amen.

Hic intrent in ecclesiam usque ad gradum altaris: sacerdos in eundo cum suis ministris, dicat Psalmum: Beati omnes. *Sine nota, cum* Gloria Patri. *et* Sicut erat. Kyrie eleyson. Christi eleyson. Kyrie eleyson. *Tunc prostratis sponso et sponsâ ante gradum altaris; roget sacerdos circumstantes orare pro eis dicens:* Pater noster. Et ne nos inducas in tentationem, sed libera nos a malo. Salvum fac servum tuum et ancillam tuam, Deus meus, sperantes in te. Mitte eis, Domine, auxilium de sancto, et de Sion tuere eos.

Esto eis, Domine, turris fortitudinis, A facie inimici. Domine exaudi orationem meam, Et clamor meus ad te veniat. Dominus vobiscum, Et cum Spiritu tuo. Oremus. *Oratio.*

Benedicat vos Dominus ex Sion, ut videatis quæ bona sunt Hierusalem omnibus diebus vitæ vestræ: et videatis filios filiorum vestrorum et pacem super Israel. Per recuperatorem. Oremus. *Oratio.*

Deus Abraham, Deus Isaac, et Deus Jacob, bene+dic adolescentes istos: et semina semen vitæ æternæ in mentibus eorum, ut quicquid pro utilitate eorum didicerint, hoc facere cupiant. Per Jesum Christum, filium tuum, recuperatorem hominum, qui tecum. *Respondetur.* Amen. Oremus. *Oratio.*

Respice, Domine, de cœlis et bene+dic conventionem istam, et sicut misisti sanctum angelum tuum Raphaelem ad Tobiam et Saram filiam Raguelis; ita digneris, Domine, mittere bene+dictionem tuam super istos adolescentes, ut in tuâ voluntate permaneant, et in tuâ securitate consistant, et in amore tuo vivant, et crescant, et senescant, et digni atque pacifici fiant, et multiplicentur in longitudinem dierum. Per Christum. Oremus. *Oratio.*

Respice, Domine, propitius super hunc famulum tuum et super hanc famulam tuam, ut in nomine tuo bene+dictionem cœlestem accipiant, et filios filiorum suorum et filiarum suarum usque in tertiam et quartam progeniem incolumes videant, et in tua voluntate semper perseverent, et in futuro ad cœlestia regna perveniant. Per Christum. Oremus. *Oratio.*

Omnipotens et misericors Deus qui primos parentes nostros Adam et Evam suâ virtute creavit, et suâ sanctificatione copulavit; ipse corda et corpora vestra sanctificet et benedicat, atque in societate et amore veræ dilectionis conjungat: Per Christum Dominum.

Deinde benedicat eos, dicens sic:

Bene+dicat vos Deus omnipotens omni benedictione cœlesti: efficiatque vos dignos in conspectu suo. Superabundet in vobis divitias gloriæ suæ, et erudiat vos verbo

veritatis, ut ei corpore pariter et mente complacere valeatis. *Respondetur.* Amen.

(*Missa Sponsalium.*)

Finitis orationibus et introductis illis in presbyterium: scilicet inter chorum et altare ex parte ecclesiæ australi; et statutâ muliere ad dexteram viri, scilicet inter ipsum et altare incipiatur missa de Trinitate. Offertorium.

Benedicta sit sancta Trinitas atque indivisa Unitas: confitebimur ei, quia fecit nobiscum misericordiam suam. *In tempore paschali* All'a all'a, post. Benedicamus Patrem et Filium cum Sancto Spiritu; *non dicatur ulterius.* Kyrie *cum suis versibus dicatur. Ad hanc missam serventur modus et ordo per omnia, qui in duplicibus festis.* Gloria in excelsis. *Istæ duæ orationes dicuntur sub uno* Oremus, *et sub unô* Per Dominum. *Oratio.*

Omnipotens sempiterne Deus, qui dedisti famulis tuis in confessione veræ fidei æternæ Trinitatis gloriam agnoscere, et in potentiâ majestatis adorare unitatem, quæsumus, ut ejusdem fidei firmitate ab omnibus semper muniamur adversis. *Oratio.*

Exaudi nos omnipotens et misericors Deus, ut quod nostro ministratur officio tuâ benedictione potius impleatur. Per Dominum.

Ad Corinthios.

Fratres, nescitis, quoniam corpora vestra membra sunt Christi? Tollens ergo membra Christi: faciam membra meretricis? Absit. An nescitis, quoniam qui adhæret meretrici: unum corpus efficitur? Erunt enim, inquit, duo in carne unâ. Qui autem adhæret Domino: unus Spiritus est. Fugite fornicationem. Omne enim peccatum, quodcunque fecerit homo: extra corpus est. Qui autem fornicatur: in corpus suum peccet. An nescitis, quoniam membra vestra templum sunt Spiritus Sancti: qui in vobis est, quem habetis a Deo, et non estis vestri? Empti enim estis pretio magno: glorificate et portate Deum in corpore vestro. *Gradale.* Benedictus es, Domine, qui intueris abyssos: et sedes super cherubin. *vs.* Benedicite Deum

cœli: quia fecit nobiscum misericordiam suam. All'a. *vs.* Benedictus es, Domine, Deus patrum nostrorum: et laudabilis in secula. *Si in tempore paschali contigerit, secundum* Alleluia erit unum de hebdomade paschæ vel unum de illis, quæ scribuntur post Offertorium: *Quasi modo gentes. Sequentia.*

Alma chorus Domini nunc pangunt nomina summi,
Messias, Sother, Emanuel, Sabaoth, Adonai,
Est unigenitus, via, vita, manus, homousion,
Principium, primogenitus, sapientia, virtus,
Alpha, caput, finisque, simul vocitatur et est ω,
Fons et origo boni, Paraclitus ac mediator,
Agnus, ovis, vitulus, serpens, aries, leo, vermis,
Os, verbum, splendor, sol, gloria, lux et imago,
Panis, flos, vitis, mons, janua, petra, lapisque
Angelus et sponsus, pastorque, propheta, sacerdos,
Athanatos, kyrios, theos, et pantoncraton, Isus,
Salvificet nos, sit cui secla per omnia doxa. Amen.

Sequentia sancti Evangelii secundum Matthæum.

In illo tempore accesserunt ad Jesum Pharisæi tentantes eum: et dicentes. Si licet homini dimittere uxorem suam quâcunque ex causâ. Qui respondens: ait illis. Non legistis quia qui fecit hominem ab initio masculum et fœminam fecit eos? Et dixit eis: Propter hoc dimittet homo patrem et matrem, et adhærebit uxori suæ, et erunt duo in carne unâ. Itaque jam non sunt duo, sed una caro. Quod ergo Deus conjunxit: homo non separet. Credo. *Offert.* Benedictus sit Deus pater, unigenitusque Dei filius, sanctus quoque Spiritus, quia fecit nobiscum misericordiam suam. *In tempore Paschali,* all'a.

Nota, quod odor thuris benedicti nunquam datur in ecclesia, sponso et sponsæ. Inde est, quod oblato thure benedicto super altare: si descendat thuribulum ad clericos vel ad laicos: aliud thus est apponendum, et clericis vel laicis offerendum. Secreta.

Sanctifica, quæsumus, Domine Deus, Trinitas sancta, per tui sancti nominis invocationem, hujus oblationis hos-

tiam: et per eam cooperante Spiritu Sancto nosmetipsos tibi perfice munus eternum. *Alia Secreta.*

Adesto, Domine, supplicationibus nostris, et hanc oblationem quam tibi offerimus pro famulis tuis, quos ad statum maturitatis et ad diem nuptiarum perducere dignatus es, placatus ac benignus assume. *Et finiantur sub uno* Per Dominum. *Prefa.* Qui cum unigenito. *Post.* Sanctus, *prosternant se sponsus et sponsa in oratione ad gradum altaris, extenso pallio super eos: quod teneant quatuor clerici in superpelliciis ad quatuor cornua, nisi alter eorum vel ambo prius desponsati fuerint et benedicti: quia tunc non habetur pallium super eos, neque sacramentalis benedictio. Deinde dicto,* Per omnia secula seculorum *et responso,* Amen: *Post* Pater noster, *antequam dicatur:* Pax Domini *factâ fractione eucharistiæ more solito dimissâque hostiâ in tribus fractionibus super patenam: dicat sacerdos conversus ad eos sequentes orationes sub tono lectionis, illis interim genu flectentibus sub pallio.* Dominus vobiscum: Et cum Spiritu tuo. Oremus. *Oratio.* . . . . .

Propitiare Domine supplicationibus nostris, et institutis tuis, quibus propagationem humani generis ordinasti, benignus assiste, ut quod te autore conjungitur, te auxiliante servetur. Per Christum. Oremus. *Oratio.*

Deus qui potestate vîrtutis tuæ de nihilo cuncta fecisti, qui dispositis universitatis exordiis: homini ad imaginem Dei facto ideo inseparabile mulieris adjutorium condidisti, ut fœmineo corpori de virili dares carne principium: docens quod ex uno placuisset institui: nunquam liceret disjungi. *Caveat sacerdos de ista clausulâ sequenti.* Deus qui tam excellenti mysterio conjugalem copulam consecrâsti, ut Christi et ecclesiæ sacramentum præsignares in fœdere nuptiarum. *Quia non dicitur in secundis nuptiis usque.* Deus per quem mulier jungitur viro *ut patet inferius.* Deus per quem mulier jungitur viro, et societas principaliter ordinata eâ bene+dictione donatur; quæ nec sola per originalis peccati pœnam: nec per diluvii est ablata sententiam. Respice, quæsumus, propitius super hanc

famulam tuam; quæ maritali jungenda consortio, tuâ se expetit protectione muniri. Sit in eâ jugum dilectionis et pacis, fidelis et casta nubat in Christo, imitatrixque sanctarum permaneat fœminarum. Sit amabilis ut Rachel viro suo, sapiens ut Rebecca, longæva et fidelis ut Sara. Nihil in eâ ex actibus suis ille auctor prævaricationis usurpet: nexa fidei mandatisque permaneat, uni thoro juncta, contactus illicitos fugiat, muniat infirmitatem suam robore disciplinæ. Sit verecundiâ gravis, pudore venerabilis, doctrinis cœlestibus erudita. Sit fœcunda in sobole, sit probata et innocens, et ad optatam perveniat senectutem, et videat filios filiorum suorum, usque in tertiam et quartam progeniem; et ad beatorum requiem atque ad cœlestia regna perveniat. Per Dominum.

Notandum est, quod hæc clausula in oratione prædicta, scil. Deus qui tam excellenti *usque ad* Deus per quem mulier jungitur, *non dicitur in secundis nuptiis, ut supra dictum est. Vir enim aut mulier ad bigamiam transiens non debet iterum a sacerdote benedici, quia aliâ vice benedicti sint, et eorum benedictio non debet iterari: quia caro benedicta trahit ad se carnem non benedictam. Et in titulo* de secundis nuptiis inhibitum est per decret. xxx. q. i. *Hac ratione benedictio non datur in secundis nuptiis, quod testatur beatus Ambrosius sic:* Primæ nuptiæ a Domino sunt institutæ: secundæ vero sunt permissæ: primæ autem sub omni benedictione celebrantur: secundæ vacarent aliquâ benedictione. *Sed plures benedictiones sunt in nuptiis celebrandis: sc. in introitu chori: sub pallio: post missam: et super thorum in sero. Quæro, quare benedictio sit iteranda in secundis nuptiis, et quare non. Dicendum est, quod in hac oratione* Deus, qui potestate virtutis tuæ, *sunt tres benedictiones quæ idem habent principium: sc.* Deus: *media autem est omnino omittenda in secundis nuptiis sc. ista,* Deus qui tam excellenti mysterio conjugalem copulam consecrasti, ut Christi et ecclesiæ sacramentum præsignares in fœdere nuptiarum, *ut supra, quia in istâ benedictione agitur de unitate Christi et ecclesiæ, quod figuratur in primo*

matrimonio, non autem in secundo. Unde et apostolus ad Corinthios VI. Erunt duo in unâ carne, *et extra de bigamis, capitulo:* Debitum unius uxoris. *Sed qui adhæret pluribus dissolvit unitatem vel fœdus unitatis, et ideo benedictio, quæ agit de unitate, scilicet:* Deus qui tam excellenti; *non dicitur in secundis nuptiis. Et hoc est verum tam pro viro bigamo quam pro muliere viduâ, quia caro benedicta trahit ad se carnem non benedictam. Sed omnes aliæ benedictiones indifferenter debent dici secundum Romanam ecclesiam, secundum Hostiensem, et secundum Thomam de Aquino et Morardum Doctorem. Et sciendum est, quod ista questio discussa fuit et determinata in sacro palatio Domini Papæ et translata in Angliam per magistrum Johannem Haystede. Et causa discussionis erat, quod multi sacerdotum tunc temporis ad sedem apostolicum convolaverunt causâ obtinendi absolutionis beneficium, pro benedictionibus in secundis nuptiis collatis indiscrete. Ideo statuitur super hoc nova constitutio Joannis Papæ XXII. quæ sic incipit.*

Concertationi antiquæ finem imponere cupientes, præsenti declaramus edicto, quod licet vir et mulier ad bigamiam vel ad secundas nuptias transierint, benedici non debent, cum fuerint alias benedicti. Quod si forsan alter eorum vel ambo essent ad secundas nuptias transituri, et in primis nuptiis benedicti non fuerint, danda est eis benedictio in secundis nuptiis. Sane volentes antiquum rigorem temperare, concedimus quod presbyter, qui secundas nuptias benedixerit scienter, ad sedem apostolicam ex hoc venire minime teneatur, sed a pœnâ suspensionis hoc casu a jure indictâ per suos possit diocesanos absolvi. Si qui vero, juxta opinionem quorundam, hactenus non reputantes se esse suspensos, ordines quoslibet, seu quævis beneficia receperint, diocesani eorum a pœnâ suspensionis prædictæ ipsos absolvere, ac super executione ordinum et retentione beneficiorum hujusmodi cum eis valeant licite dispensare.

Hic quæri potest, quare secundæ nuptiæ non benedicuntur. Ad hoc dico, quod secundum matrimonium, quamvis in se

consideratum habeat sacramentum, tamen in ordine ad primum sacramentum consideratum aliquem habet defectum sacramenti: quia non habet plenam significationem, cum non sit una unius, sicut est in matrimonio redemptoris et ecclesiæ et ratione hujus defectus, benedictio a secundis nuptiis: subtrahitur sed hoc intelligendum est, quando secundæ nuptiæ sunt secundæ ex parte viri et ex parte mulieris, vel ex parte mulieris tantum. Si enim virgo contrahat cum illo, qui habuit aliam uxorem, nihilominus nuptiæ benedicuntur. Salvatur et alio modo significatio etiam in ordine ad primas nuptias, quia Christus etsi unam ecclesiam habet, habet tamen plures personas desponsatas in unâ ecclesiâ. Sed animo non potest sponsa alterius esse quam Christi, quia cum demone fornicatur, nec est matrimonium spirituale; et propter hoc quando mulier secundo nubit, nuptiæ non benedicuntur, propter defectum sacramenti.

Post hæc vertat se sacerdos ad altare, et dicat Pax Domini: *et* Agnus Dei; *more solito. Tune amoto pallio, surgant ab oratione sponsus et sponsa, et accipiat sponsus patenam a sacerdote, et ferat sponsæ, osculans eam et neminem alium, nec ipse nec ipsa: sed clericus statim a Presbytero pacem accipiens, proferat aliis sicut solitum est. Communio.*

Benedicimus Deum cœli: et coram omnibus viventibus confitebimur ei: quia fecit nobiscum misericordiam suam. *In tempore paschali* Alleluia all'a. *Post-Communio.*

Proficiat nobis ad salutem corporis et animæ, Domine Deus, hujus sacramenti susceptio, et sempiternæ sanctæ Trinitatis, quam individuæ unitatis confessio.

Alia post-communio sub uno Oremus *et sub uno* Per Dominum.

Quæsumus, omnipotens Deus, instituta providentiæ tuæ pro amore comitare, ut quos legitima societate connectis longævâ pace custodias: per Dominum nostrum.

Post missam benedicatur panis et vinum vel aliquod bonum potabile in vasculo, et gustent in nomine Domini, sacerdote

dicente Dominus vobiscum et cum Spiritu tuo. Oremus. *Oratio.*

Bene+dic, Domine, istum panem et hunc potum et hoc vasculum, sicut benedixisti quinque panes in deserto et sex hydrias in Chana Galileæ, ut sint sani, sobrii atque immaculati omnes gustantes ex eis, Salvator mundi, qui vivis et regnas cum Deo patre in unitate Spiritus Sancti, Deus. Per.

Nocte vero sequente, cum sponsus et sponsa ad lectum pervenerint, accedat sacerdos et benedicat thalamum dicens. Dominus vobiscum: Et cum Spiritu tuo. Oremus. *Oratio.*

Bene+dic, Domine, thalamum istum et omnes habitantes in eo, ut in tuâ pace consistant, et in tuâ voluntate permaneant, et in tuo amore vivant, et crescant, et multiplicentur in longitudine dierum. Per recuperatorem. *Benedictio super lectum tum cum* Deus vobiscum: Et cum Spiritu tuo. Oremus. *Oratio.*

Bene+dic, Domine, hoc cubiculum, qui non dormis neque dormitas. Qui custodis Israel, custodi famulos tuos in hoc lecto quiescentes ab omnibus fantasmaticis dæmonum illusionibus. Custodi eos vigilantes, ut in præceptis tuis meditentur dormientes; ut te per soporem sentiant, et hic et ubique defensionis tuæ semper muniantur auxilio; Per Dominum.

Deinde fiat benedictio super eos in lecto cum Oremus. *Oratio.*

Bene+dicat Deus corpora vestra et animas vestras: et det super vos bene+dictionem, sicut benedixit Abraham, Isaac, Jacob. *Resp.* Amen. *Item alia benedictio cum* Oremus. *Oratio.*

Manus Domini sit super vos, mittatque angelum suum sanctum, qui custodiat et foveat vos omnibus diebus vitæ vestræ. *Resp.* Amen. *Item alia benedictio super eos cum* Oremus. *Oratio.*

Bene+dicat vos Pater et Filius et Spiritus Sanctus, qui trinus est in numero et unus in nomine. *Resp.* Amen.

His peractis aspergat eos sacerdos aquâ benedictâ, et sic discedat et dimittat eos in pace.

4. The forme of Solemnizacion of Matrimonie:—From "the Booke of the Common Prayer and administracion of the Sacramentes and other rites and ceremonies of the Churche after the use of the Churche of Englande." London, 1549. King Edward's first Book. The principal variations made in the second Book are noticed in the margin.

First, the Bannes must be asked thre several Sondayes or holy dayes in the service tyme, the people beyng present, after the accustomed maner. And if the persones that would be maried dwell in divers parishes, the Bannes must be asked in both parishes, and the Curate of thone parishe shall not solemnize Matrimony betwixt them without a certificat of the Bannes beyng thrise asked, from the Curate of the other parishe. At the day appointed for solemnizacion of Matrimony, the persones to be maried shall come into the body of the Churche with their frendes and neighbors. And there the Priest shal thus say:

Dearely beloved frendes, we are gathered together here in the sight of God, and in the face of his congregacion, to joyne together this man and this woman in holy matrimony, which is an honorable estate, instituted of God in Paradise, in the tyme of manne's innocencie, signifying unto us the misticall union that is betwixt Christ and his Churche, which holy estate Christ adourned and beautified with his presence and first miracle that he wrought in Cana of Galile, and is commended of Sainct Paule to be honorable among all men, and therefore is not by any to be enterprised nor taken in hand unadvisedly, lightly, or wantonly, to satisfie men's carnall lustes and appetites like brute beastes that have no understandyng, but reverently, discretly, advisedly, soberly, and in the feare of God: duely consideryng the causes for the which matrimony was ordayned. One cause was the procreacion of children, to be

brought up in the feare and nurture of the Lorde, and praise of God. Secondly, it was ordayned for a remedy against synne, and to avoyde fornicacion, that suche persones "as be maried might live chastly in matrimony[r], and kepe themselves undefiled members of Christ's body. Thirdly, for the mutual societie, helpe, and comforte, that the one ought to have of thother, both in prosperitie and adversitie, into the whiche holy estate these two persones present come nowe to be joyned. Therfore if any man can shewe any just cause why thei may not lawfully be joyned so together, let him now speake, or els hereafter for ever hold his peace.

And also speakyng to the persones that shall be maried, he shal saie:

I require and charge you (as you wyll aunswere at the dreadfull daie of judgment, when the secretes of all hartes shall be disclosed,) that if either of you do knowe any impediment, why ye may not be lawfully joyned together in matrimonie, that ye confesse it: for be ye well assured, that so many as bee coupled together otherwaies than God's worde doeth alowe, are not joyned by God, neither is their matrimonie lawfull.

At which day of mariage, if any man do allege any impediment why they may not be coupled together in "matrimonie[s], and will be bound, and suerties with him, to the parties, or els put in a caution to the ful value of such charges as the persons to be maried do sustaine to prove his allegation; then the solemnizacion must be differed to such time as the trueth be tried. If no impediment be alleged, then shal the Curate saie unto the man:

N. Wylt thou have thys woman to thy wedded wyfe, to live together after Goddes ordinaunce in the holy estate of matrimonie? Wylt thou love her, comforte her, honoure and kepe her in sickenesse and in health, and forsakyng

[r] as have not the gift of continencie might marie. [s] matrimonie by Goddes lawe, or the lawes of this realme.

all other, keep thee only to her so long as you both shall lyve?

The man shall aunswere, I wyll.

Then shall the Priest say to the woman:

N. Wylt thou have this man to thy wedded husbande, to lyve together after Goddes ordinaunce in the holy estate of matrimonie? Wilt thou obey him and serve him, love, honor, and kepe him in sickenes and in health, and forsakyng all other kepe the only to him, so long as you both shall lyve?

The woman shall aunswere, I wyll.

Then shall the minister saie:

Who geveth this woman to be maried to this man?

And the Minister, receiving the woman at her father or frendes handes, shall cause the man to take the woman by the ryght hande, and so either to geve their trouth to other; the man first saiyng:

I N. take the N. to my wedded wife, to have and to holde from this daie forward, for better for worse, for rycher for poorer, in sickenes and in health, to love and to cherysh, tyl death us departe, according to Goddes holy ordinaunce; and thereto I plyght thee my trouth.

Then shall they lose their handes, and the woman, takyng again the man by the ryght hande, shall saie:

I N. take the N. to my wedded husband, to have and to hold from this daie forward, for better for worse, for rycher for poorer, in sickenes and in health, to love, cherysh, and to obey, til death us departe, according to Goddes holy ordinaunce; and thereto I geve the my trouth.

Then shall they againe lose their handes, and the man shall geve unto the woman a ryng, "and other tokens of spousage, as gold or sylver[t], laiyng the same upon the boke[u]: And the Priest takyng the ryng shall deliver it unto the man

[t] Omitted.

[u] boke, with the accustomed duetie to the Priest and Clerk.

to put upon the fourth finger of the woman's left hand. And the man taught by the Priest shall saie:

Wyth thys ryng I the wed: "this gold and sylver I the give[x]: with my body I the worship, and with al my worldly goodes I the endowe: In the name of the Father, and of the Sonne, and of the Holy Ghost. Amen.

Then the man leavyng the ryng upon the fourth fynger of the woman's left hande, the minister shall saie:

Let us praie.

O eternall God, Creatour and Preserver of all mankinde, Gever of all spirituall grace, the Auctor of everlastyng lyfe, sende thy blessing upon these thy servauntes, this man and this woman, whom we blesse in thy name; that, as Isaac and Rebecca "(after bracelettes and jewels of gold geven of thone to thother for tokens of their matrimonie[y]) lived faithfully together, so these persons maie surely perfourme and kepe the vowe and covenaunte betwixt them made, whereof this ring geven and received is a token and pledge, and maie ever remaine in perfecte love and peace together, and lyve according to thy lawes; through Jesus Christ our Lorde. Amen.

Then shall the Priest joyne their ryght handes together, and saie:

Those whome God hath joyned together, let no man put asunder.

Then shall the Minister speake unto the people:

Forasmuche as N. and N. have consented together in holy wedlocke, and have witnessed the same here before God and this company, and therto have geven and pledged their trouth either to other, and have declared the same by geving and receiving of "gold and silver[z], and by joyning of handes, I pronounce that thei be man and wife together: In the name of the Father, of the Sonne, and of the Holy Ghost. Amen.

And the Minister shall adde this blessyng:

"God the Father bless you + God the Sonne kepe you,

[x] Omitted. [y] Omitted. [z] a ring.

God the Holy Ghost lighten your understanding[a]: the Lord mercifully with his favour loke upon you, and so fill you with all spirituall benediction and grace, that you "may have remission of your sinnes in this life, and in the world to come lyfe everlastyng[b]. Amen.

Then "shall thei go into the Quier, and the Ministers or Clerkes[c] shall saye or syng thys Psalm folowynge.

Blessed are all thei that feare the Lorde, and walke in his wayes:

For thou shalt eate the labour of thy handes: O well is the, and happy shalt thou be.

Thy wyfe shall be as the fruitfull vine upon the walles of thy house.

Thy children like the olive braunches rounde about thy table.

Lo! thus shall the man be blessed that feareth the Lorde.

The Lorde from out of Sion shall so blesse thee, that thou shalt see Hierusalem in prosperitie all thy lyfe long.

Yea, that thou shalt see thy childer's chyldren, and peace upon Israell.

Glory be to the Father, etc. As it was in the begin. etc.

Or els this Psalme folowyng.

God be mercyful unto us, and blesse us, and shewe us the light of his countenaunce, and be mercyfull unto us.

That thy waie maie be knowen upon earth; thy savyng health among all nacions.

Let the people prayse the, (God,) yea, let all people prayse the.

O let the nacions rejoice and be glad: for thou shalt judge the folke righteously, and govern the nacions upon earth.

Then shall the yearth bring furth her increase, and God, even our owne God, shall geve us his blessyng.

[a] God the Father, God the Sonne, God the Holy Ghost, blesse, preserve, and kepe you. [b] maie so live together in this life, that in the world to come you may have life everlastyng. [c] the Ministers or Clerks going to the Lord's table.

God shall blesse us, and all the endes of the worlde shall feare him.

Glory be to the Father, etc. As it was in the, etc.

The Psalme ended, and the man and woman kneling afore the Aulter[d], *the Priest standing at the Aulter*[e], *and turnyng his face toward them, shall saie:*

Lord, have mercy upon us.

Aunswere. Christ, have mercy upon us.

Minister. Lorde, have mercy upon us.

Our Father, whiche art in heaven, etc.

And lead us not into temptacion.

Aunswere. But deliver us from evill. Amen.

Minister. O Lord, save thy servaunt and thy handmaide.

Aunswere. Which put their trust in the.

Minister. O Lorde, sende them helpe from thy holy place.

Aunswere. And evermore defende them.

Minister. Be unto them a towre of strength,

Aunswere. From the face of their enemie.

Minister. O Lorde, heare my prayer.

Aunswere. And let my cry come unto the.

Let us praie.

O God of Abraham, God of Isaac, God of Jacob, blesse these thy servauntes, and sowe the sede of eternal life in their myndes, that whatsoever in thy holy woorde they shall profitably learne, they maye in dede fulfill the same. Loke, O Lorde, mercifully upon them from heaven, and blesse them. And as thou dyddest sende "thy Aungell Raphaell to Thobie and Sara, the daughter of Raguell[f], to their great comfort; so vouchsafe to send thy blessyng upon these thy servauntes, that thei obeiyng thy wyll, and alway beyng in safetie under thy protection, maie abide in thy love unto their lives' ende, through Jesu Christ our Lorde. Amen.

[d] Lord's Table. [e] Table. [f] thy blessyng upon Abraham and Sarah.

This Praier folowyng shal be omitted, wher the woman is past childbirth.

O mercyfull Lorde and heavenly Father, by whose gracious gift mankynd is increased, we beseche the, assiste with thy blessyng these two persons, that thei maie both be fruitful in procreacion of children, and also live together so long in godly love and honestie, that thei maie se their childers children unto the third and fourth generacion, unto thy praise and honour, through Jesus Christ our Lorde. Amen.

O God, which by thy mighty power hast made all thinges of naught, which also after other thinges set in order diddest appoint, that out of man (created after thine owne image and similitude) woman should take her beginning; and knitting them together diddest teache, that it should never be lawful to put asunder those whom thou by matrimonie haddest made one; O God, which hast consecrated the state of matrimonie to such an excellent misterie, that in it is signified and represented the spiritual marriage and unitie betwixte Christ and his Church: loke mercifully upon these thy servauntes, that both this man may love hys wife according to thy word, (as Christ did love his spouse the Church, who gave himself for it, lovyng and cherishyng it, even as his owne flesh,) and also that this woman may be lovyng and amiable to her husband as Rachell, wise as Rebecca, faithful and obedient as Sara, and in all quietnes, sobrietie, and peace, be a folower of holy and godly matrones. O Lord, bless them both, and graunt them to inherite thy everlastyng kyngdom, through Jesu Christ our Lorde. Amen.

Then shall the Priest blesse the man and the woman, saiyng:

Almightie God, which at the beginnyng did create our first parentes Adam and Eve, and did sanctifie and joyne them together in mariage, poure upon you the richesse of his grace, sanctifye and +blesse you, that ȳe maie please hym both in bodie and soul, and live together in holy love unto your lyves end. Amen.

Then "shall be saied, after the Gospel[g] *a Sermon, wherein ordinarily, so oft as there is any mariage, the office of man and wife shall be declared according to holy Scripture; or if there be no Sermon the Minister shall read this that foloweth.*

All ye whiche be maried, or which entende to take the holy estate of matrimonie upon you, heare what holy Scripture doth saie as touching the duty of housbandes toward their wyves, and wyves toward their husbandes.

Saincte Paule, in his Epistle to the Ephesians, the v. chapter, doeth geve this comaundement to al maried men.

Ye husbandes, love youre wives, even as Christ loved the Church, and hath geven himself for it, to sanctifie it, purging it in the fountaine of water through the worde, that he might make it unto himselfe a glorious congregacion, not having spot, or wrincle, or any such thing, but it should be holy and blameles. So men are bound to love their owne wyves as their owne bodies: he that loveth his owne wife loveth himself. For never did any man hate his own flesh, but norysheth and cherisheth it, even as the Lorde doeth the congregacion; for we are members of hys bodie, of hys fleshe, and of his bones.

For this cause shal a man leave father and mother, and shal be joyned unto hys wyfe, and thei two shal be one flesh. This mistery is great; but I speake of Christ and of the congregacion. Neverthelesse let every one of you so love his owne wyfe, even as himselfe.

Lykewyse the same Saincte Paule (wryting to the Colossians) speaketh thus to all men that be maried: Ye men, love your wyves, and be not bitter unto them.

Heare also what Saincte Peter, the Apostle of Christ, which was himself a maryed man, saith unto all men that are maried: Ye husbandes, dwell wyth your wyves according to knowlege, gevyng honoure unto the wyfe, as unto the weaker vessell, and as heyres together of the grace of lyfe, so that your prayres be not hyndered.

[g] shal begin the Communion.

Hetherto ye have hearde the duetie of the husbande towarde the wyfe.

Nowe lykewyse, yee wyves, heare and learne your duetie towarde your husbandes, even as it is plainly set forth in holy Scripture.

Sainte Paule, in his fornamed Epistle to the Ephesians, teacheth you thus: Ye women, submit yourselfes to your own husbandes, as unto the Lorde; for the husband is the wives head, even as Christ is the hed of the Churche: and he is the Saviour of the whole body. Therfore as the Churche or congregacion is subject unto Christ, so lykewise let the wives be in subjection unto their own husbandes in all thinges. And again he saith, Let the wyfe reverence her husbande. And, in his Epistle to the Colossians, Saint Paule giveth you this short lesson: Ye wives, submit yourselves unto your owne husbandes, as it is convenient in the Lorde.

Sainte Peter also doeth instruct you very godly, thus saiyng: Let the wyves be subject to their owne husbandes; so that if any obey not the word, they may be wonne without the worde by the conversacion of the wives, while they behold your chaste conversacion coupled with feare: whose apparel let it not be outwarde with broyded heare and trimmyng about with golde, either in putting on of gorgeous apparel; but let the hydde man which is in the hearte be without all corrupcion, so that the spirite be mylde and quiet, whiche is a precious thing in the sight of God. For after this maner in the olde tyme did the holy women which trusted in God apparel themselves, being subject to their own husbandes, as Sara obeied Abraham, calling him lord: whose daughters ye are made, doyng well, and beyng not dismayde with any feare.

The newe married persons (the same day of their maryage) must receive the holy Communion.

5. "The Form of Solemnization of Matrimony,"—extracted from "The Book of Common Prayer, and Admin-

istration of the Sacraments, and other Rites and Ceremonies; as revised and proposed to the use of the Protestant Episcopal Church; at a Convention of the said Church in the States of New York, New Jersey, Pensylvania, Delaware, Maryland, Virginia, and South Carolina, held in Philadelphia, from September 27th to October 7th, 1785. Philadelphia, printed: London, reprinted, 1789."

¶ *The laws respecting Matrimony, whether by publishing the Banns in Churches or by Licence, being different in different States, every Minister is left to the direction of those laws, in every thing that regards the civil contract between the parties.*

¶ *At the day and time appointed for Solemnization of Matrimony, the Minister shall say to the persons assembled:*

Dearly beloved, we are gathered together here in the sight of God to join together this man and this woman in holy matrimony; therefore, if any man can shew any just cause, why they may not lawfully be joined together, let him now speak, or else hereafter for ever hold his peace.

¶ *And, speaking unto the persons who shall be married, he shall say,*

I require and charge you both, (as ye will answer at the dreadful day of judgment, when the secrets of all hearts shall be disclosed,) that if either of you know any impediment, why ye may not be lawfully joined together in matrimony, ye do now confess it. For be ye well assured, that so many as are coupled together otherwise than God's word doth allow, are not joined together by God, neither is their matrimony lawful.

¶ *And if no impediment be alleged, then shall the Minister say unto the man,*

M. Wilt thou have this woman to thy wedded wife, to live together after God's ordinance in the holy estate of matrimony? Wilt thou love her, comfort her, honour, and keep her, in sickness and in health; and forsaking all other keep thee only unto her, so long as ye both shall live?

¶ *The man shall answer,*

I will.

¶ *Then shall the Minister say unto the woman,*

N. Wilt thou have this man to thy wedded husband, to live together after God's ordinance in the holy estate of matrimony? Wilt thou obey him, and serve him, love, honour, and keep him, in sickness and in health; and forsaking all other keep thee only unto him, so long as ye both shall live?

¶ *The woman shall answer,*

I will.

¶ *Then shall the Minister say,*

Who giveth this woman to be married to this man?

¶ *Then the Minister, receiving the woman at her father's or friend's hands, shall cause the man with his right hand to take the woman by her right hand, and to say after him as followeth:*

I M. take thee N. to my wedded wife, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death us do part, according to God's holy ordinance.

¶ *Then shall they loose their hands, and the woman with her right hand taking the man by his right hand shall likewise say after the Minister:*

I N. take thee M. to my wedded husband, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, till death us do part, according to God's holy ordinance.

¶ *Then shall they again loose their hands, and the man shall give unto the woman a ring. And the Minister, taking the ring, shall deliver it unto the man, to put it upon the fourth finger of the woman's left hand. And the man, holding the ring there, and taught by the Minister, shall say:*

With this ring I thee wed, and with all my worldly goods I thee endow: In the name of the Father, and of the Son, and of the Holy Ghost. *Amen.*

¶ *Then the man leaving the ring upon the fourth finger of the woman's left hand, the minister shall say:*

Let us pray.

O Eternal God, Creator and Preserver of all mankind, Giver of all spiritual grace, the Author of everlasting life; send thy blessing upon these thy servants, this man and this woman, whom we bless in thy name; that as Isaac and Rebecca lived faithfully together, so these persons may surely perform and keep the vow and covenant betwixt them made, (whereof this ring given and received is a token and pledge,) and may ever remain in perfect love and peace together, and live according to thy laws, through Jesus Christ our Lord. *Amen.*

¶ *Then shall the Minister join their right hands together, and say:*

Those whom God hath joined together, let no man put asunder.

¶ *Then shall the Minister speak unto the company:*

Forasmuch as M. and N. have consented together in holy wedlock, and have witnessed the same before God and this company, and have declared the same by giving and receiving of a ring, and by joining of hands; I pronounce that they are man and wife together; In the name of the Father, and of the Son, and of the Holy Ghost. *Amen.*

¶ *And the Minister shall add this blessing:*

God the Father, God the Son, God the Holy Ghost, bless, preserve, and keep you: the Lord mercifully with his favour look upon you, and fill you with all spiritual benediction and grace, that ye may so live together in this life, that in the world to come ye may have life everlasting. *Amen.*

6. La Liturgie du Mariage: according to the Liturgy of Geneva, which is principally used in the Protestant Valleys of Piemont: extracted from Mr. Gilly's interesting narrative of an excursion to the mountains of Piemont, and

researches among the Vaudois or Waldenses: Appendix, No. VI.

L'epoux et l'epouse étant debout devant la chaire, le ministre leur dit:

Notre aide soit au nom de Dieu, qui a fait le ciel et la terre. Amen.

Vous vous présentez devant Dieu pour implorer sa bénédiction sur votre mariage, et pour vous engager solemnellement à en remplir les obligations.

Puis le ministre s'adresse à l'assemblee:

Dieu, qui est le père du genre humain, ayant créé les cieux, et la terre et préparé le domicile de l'homme, forma l'homme à son image, et lui donna une aide semblable à lui.

Telle fût l'institution du mariage, par laquelle Dieu pourvut à la conservation du genre humain et à la pureté des mœurs. Ce moyen de perpétuer les générations humaines étoit également assorti à la nature de l'homme, et à l'état de société, auquel il étoit destené. Dieu fit en même temps connoître par la qu'il vouloit que chaque homme fût mari d'une seule femme et qu'il y eût entr'eux la plus étroite union. C'est cette institution du mariage, que Jésus Christ rappelle dans sa réponse à cette question des Pharisiens: est-il permis à un homme de répudier sa femme pour quelque sujet, que se soit? Et il en tira cette conséquence: que l'homme, ne sépare donc pas ce que Dieu a joint. Matth. xix. L'Evangile, en nous rappelant ainsi à l'institution divine du mariage, en fortifie toutes les obligations. Le Mari doit aimer sa femme comme un autre lui-même, en avoir soin, avoir beaucoup d'égards pour elle. La femme, de son côté, doit aimer son mari, lui être soumise dans toutes les choses bonnes et honnêtes; ils doivent vivre ensemble dans la paix, user d'un support réciproque, et se garder une fidélité inviolable l'un à l'autre.

Le ministre s'arrête un moment et continue en s'adressant aux epoux séparément.

Vous N. vous déclarez donc ici, devant Dieu et devant cette assemblée, que vous avez pris, et que vous prenez pour votre femme N. ici présente. Vous promettez de l'aimer, de l'entretenir, et de lui garder la foi, comme c'est le devoir d'un Mari Chrétien envers sa femme et comme Dieu vous le commande dans sa parole.

Réponse : Oui.

Vous N. vous declarez ici devant Dieu et devant cette assemblée, que vous avez prise, et que vous prenez N. ici présent, pour votre Mari légitime. Vous promettez de l'aimer, de lui être soumise dans toutes les choses bonnes et honnêtes, et de lui garder la foi, comme c'est le devoir d'une épouse Chrétienne envers son Mari et comme Dieu vous le commande dans sa parole.

Réponse : Oui.

Souvenez-vous, l'un et l'autre des promesses que vous venez de faire. Et puisque Dieu vous a unis par le bien sacré du mariage, vivez ensemble dans la paix, dans l'union, dans l'honnêteté : revêtez-vous de douceur, de support, de complaisance ; les devotions domestiques étant infiniment propres à resserrer tous les liens d'affection, à adoucir toutes les paines, à ménager des consolations pour les jour d'épreuves, prenez-en la sainte habitude et pratiquez-les sans interruption. Que l'Eglise soit édificé par votre conduite, et que votre example apprenne qu'il n'y a d'union vraiment douce et heureuse, que celles qui ont pour base la piété et la vertu.

Prions Dieu tous ensemble qu'il répande sa bénédiction sur ces personnes et sur leur mariage.

Seigneur Dieu, qui, dans ton infinie sagesse, as toi-même institué le mariage, et qui as pourvu par ce moyen au plus grand bien de la société et de tous ceux qui la composent, puisqu'il t'a plu d'appeler ces époux à cet état sacré, ratifie les promesses qu'ils viennent de faire en ta présence, et fais-leur la grâce de bien remplir les devoirs auxquels ils se sont volontairement engagés : qu'ils vivent saintement, dans la paix et dans ta crainte ; qu'ils edifient l'Eglise par

leur union et par la régularité de leur vie. Donne-leur ta bénédiction comme à tes fidèles serviteurs. Et s'ils ont des enfans, fais qu'ils s'appliquent avec soin a les instruire dans la pure religion que ton fils est venu nous enseigner de ta part, et à les former à la vertu, afin que, remplissant ainsi leurs devoirs, et entrant dans les vues de ta sagesse, ils contribuent à ta gloire et travaillent de concert a l'œuvre de leur salut. Exauce-nous, Pere de grâce pour l'amour de ton cher fils Jésus Christ notre Seigneur. Amen.

Le ministre s'adressant encore aux deux personnes mariées, ajoute :

Que Dieu, notre père céleste vous comble de ses bénédictions, et vous fassez la grâce de vivre ensemble longtemps, heureusement et saintement dans sa crainte et dans son amour. Ainsi, soit il.

Allez en paix, souvenez vous des pauvres et que le Dieu de paix soit avec vous.

FINIS.

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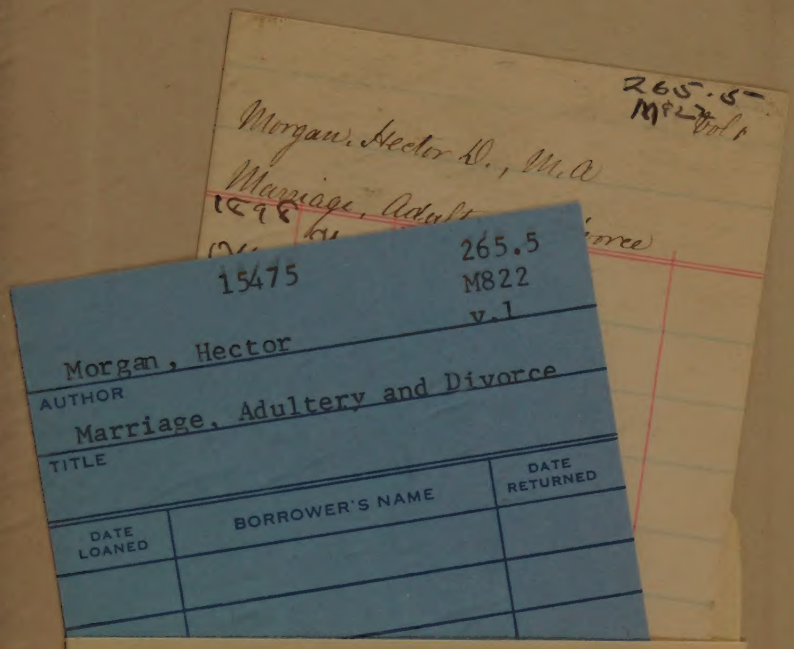

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